Quality, equity, sustainability: the future of higher education regulation

Report of the Universities UK Regulation Task and Finish Group
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Foreword

Our higher education system is a national asset of which we should be proud, and which we should celebrate at every opportunity. We have a globally prominent position and continue to demonstrate excellence in teaching and research, and make a significant contribution to the economy. For those constituents with an interest or stake in higher education, confidence in the quality and sustainability of the sector is underpinned by the effective governance and management of autonomous institutions. Institutions also operate within a system of external regulation and accountability that provides additional reassurances and that has, until recently, served us well.

There are, however, good reasons to look afresh at how the sector should be regulated. Students themselves are now the primary funders of undergraduate education in England and it is natural that they should seek assurance that their needs and concerns are being addressed. This shift in funding means that assurances provided through conditions attached to public funding are becoming harder to apply and operate, and gaps are emerging. Alongside this there is growth in the number of higher education providers, and with this an increasing diversity of corporate forms and approaches to governance. This may be good for competition and choice, but it is important to be confident that all providers can give robust assurances on the quality and sustainability of their offer. Overall, there is also a need to tackle the complexity in the current system, which is confusing and risks an increased burden on institutions. Without a clear and strategic response to these challenges there is a risk that the hard won reputation of – and trust in – higher education will be eroded.

The proposals in this report tackle these concerns and set out a new approach. In formulating these recommendations there have been some important considerations. Maintaining institutional autonomy is fundamental. We also need to build on what works in the current system, particularly co- and self-regulation, rather than reinvent it anew. With greater diversity there is a danger that we try (to the detriment of all) to regulate providers indiscriminately, without regard to circumstance or history. It will be extremely important, therefore, to ensure that regulation is risk aware, proportionate and equitable. Our recommendations include the establishment of a Register of Approved Higher Education Providers, giving the current higher education register greater regulatory status, and a new Council for Higher Education for England, evolved from HEFCE, that would lead and coordinate sector regulation. There is also a proposal for how student protection concerns can be addressed in a risk based and proportionate way to give students the safeguards they need.
These recommendations set out the cornerstones for a reformed approach and further detail will of course be needed. To implement them, however, will require changes to primary legislation. We therefore look forward to engaging with all political parties on the proposals in this report before and beyond the 2015 General Election.

I would like to thank the task group and everyone that we spoke to or who made a contribution to this work.

Professor Simon Gaskell

Chair, Universities UK Regulation Task and Finish Group
President and Principal, Queen Mary University of London
Executive summary and recommendations

Higher education is one of this country’s major assets, teaching over 2 million students per year, with an international reputation for quality and high levels of student satisfaction. Export earnings from international students amounted to nearly £11 billion in 2011–12 and the wider economic impact of higher education has been calculated at £73 billion. This success has been underpinned by autonomous institutions with a strong record of good governance and management that provides assurances to students, employers and the public more widely. This has worked alongside an external regulatory regime that provides additional checks, balances and reassurances. Higher education continues to excel, but recent changes to the funding and operating environment mean that the current system of regulation is becoming outdated and reform is needed. If the challenge of regulatory reform in higher education is not addressed there is a danger that confidence in the quality, sustainability and value of higher education will be eroded.

With students now the principal direct funders of undergraduate provision there needs to be a greater emphasis on promoting and protecting the student interest. This shift in the flow of funding also means a weakening in the application of traditional external assurance mechanisms, which rely on conditions attached to public funding. Deregulation of student number controls and increasing competition between providers is on the one hand stimulating investment and innovation, but on the other is leading to greater calls for reassurances around quality and sustainability. Growth in the number and diversity of higher education providers brings the potential for greater choice, but also greater variety in corporate form, ownership and approaches to governance. All this can breed uncertainty in those constituencies with a strong interest in higher education (notably students, employers, government, funders and the public). Overall the regulatory landscape is becoming increasingly complex and difficult to understand, with no clear guiding strategy or leadership to shape its future direction. This brings with it dangers of short-termism, regulatory creep and excessive burden on institutions that will stifle innovation and competitiveness if left unchecked.

A proactive response to these challenges is now needed to deliver a coherent regulatory framework for higher education, and one that is fit for purpose in the new operating environment. Students will need to be front and centre of this new system, which must also ensure that the autonomy of institutions is protected and regulatory burden is kept to a minimum. The diversity of providers and risks within the system means that a one-size-fits-all approach is inappropriate; rather, we need a proportionate and equitable approach that recognises this diversity.
Recognising the need for change, this report sets out proposals that can establish the cornerstones for a new regulatory framework. The full recommendations are set out in Chapter 5. They include:

- **A register be established to act as the gateway into the sector for all higher education providers**, setting out clear and robust entry requirements and providing greater clarity for students and other constituencies on the assurances they can expect.

- **Meeting the need for more effective leadership and strategic oversight of the regulatory system**, through a new lead regulator, the Council for Higher Education England (CHEE). HEFCE should evolve to take on these responsibilities, alongside its important and complementary roles for funding teaching, research and knowledge transfer.

- **A new approach for protecting the student interest in the event of institutional or course closure**. This would involve CHEE taking on a role to facilitate continuity of provision and to protect the public and student interest, alongside requirements for institutions to develop their own plans for how they would manage the student interest in such instances.

- **Necessary changes should be made to primary legislation in order to implement the proposals in this report**, particularly the role and powers of CHEE and to give the proposed register appropriate regulatory status. Fundamental protections enshrined in the current higher education legislation, notably those that maintain academic freedom and institutional autonomy through an arms-length relationship with government, should be retained for the new operating environment.

There will be much detail to work through, but these proposals provide a robust foundation from which to develop further work in partnership with students, government, regulators and others with an interest in protecting the reputation of higher education.
**Scope of the task group’s work**

This report is the outcome of a task and finish group set up by Universities UK and led by Professor Simon Gaskell, President and Principal of Queen Mary University of London. The group was established to examine how the regulation of higher education needs to adapt to ensure it meets the interests of students and other constituencies, is fit for purpose in the longer term, and can help promote and maintain the high quality and international reputation of the sector. The full membership and terms of reference for the group can be found in Annexe A.

The focus of this report is on undergraduate higher education provision in England in its diversity. It does not claim to cover all of the potential issues and implications for all providers (for example, there is no explicit focus on regulation of higher education provided in further education, although many of the issues raised will be relevant). It is also recognised that many higher education institutions and providers undertake a much wider range of activities. To differing degrees this includes postgraduate provision, research, knowledge exchange and activities that focus on engagement in the social and cultural life of regions and/or the nation. Where necessary this report takes account of this wider context and care has been taken to understand the potential implications of direct changes in the regulation of undergraduate provision. It is also recognised that although changes to undergraduate funding for home and European Union students are a significant driver for looking at the reform of higher education regulation, many of the concerns around ensuring high quality provision and safeguarding the student interest apply equally to international students.

To inform the development of this report the group has sought views and input from a wide range of interests and stakeholders, including students’ representatives, regulators and institutions. We have also drawn on a significant number of reports and evidence already published on this issue, exploring developments from across the UK and internationally. A full list of those that have provided input to this work is included in Annexe B and we would like to thank everyone that contributed. Their input has been extremely valuable.
Introduction

The UK higher education system is a success story. It teaches over 2 million students per year, with an international reputation for quality that attracts over 300,000 international students annually. The export earnings for the country from international students amounted to nearly £11 billion in 2011–12. The outcomes from the 2014 National Student Survey (NSS) demonstrate that satisfaction among students remains consistently high. Higher education in this country is also a world leading research power that is second only to the United States and is an engine for driving skills and innovation in the economy, with institutions and businesses working closely together across a wide range of sectors. The sector contributes £73 billion to the sector annually (2011–12 figures)1.

The overwhelming majority of established higher education institutions have also demonstrated a strong track record of stability, underpinned by good governance and management, meaning students, graduates and employers can have confidence in the value of qualifications both in the short and longer term. The regulation of higher education should therefore be seen very much within this context. We start from a position of strength and are not looking to fix a broken system or address systematic failures.

It should be recognised, however, that over the last five years there have been a number of significant changes to the funding of higher education and to the wider operating environment. Shifts in the way undergraduate education is funded and a deregulation of student number controls means that we now have a more demand-led system where funding follows the student. There has also been a steady expansion in the number of higher education providers, and with this greater diversity of provision. Taken together, these developments are leading to a more competitive environment.

These changes have opened up new opportunities and stimulated innovation and investment, with students and the student experience increasingly at the heart of how institutions are responding. With these developments come increasing expectations about the quality and sustainability of higher education provision. In particular, students, as the principal funders and beneficiaries of undergraduate teaching, and their families, will want robust and clear reassurances over the security and value of the investment they are making.

Regulation of the sector needs to keep pace with these changing expectations if confidence is to be maintained. The current system, underpinned by legislation set out in the early 1990s and designed for a different operating environment, is increasingly out of step and

1 Universities UK (2014) The impact of universities on the UK economy
www.universitiesuk.ac.uk/highereducation/Pages/ImpactOfUniversities.aspx
therefore gaps are emerging. Important short-term measures have been taken to address this, but a more strategic response is now required.

This report takes up this challenge. It examines the pressures and drivers for change, identifies where the emerging gaps are, and makes proposals for the development of a longer-term regulatory framework that will be fit for purpose.

In the course of the work there have been a number of important considerations. Firstly, it has been necessary to recognise the different constituencies that have a strong interest in higher education, and their needs. The debate about regulation in higher education has quite rightly focused principally on the student interest. However, it is important that any reforms recognise the many others who are entitled to assurances about the quality, equity and sustainability of higher education provision. Many institutions are diverse in their missions and activities, and will be accountable to multiple interests and need to balance different demands. For example, the majority of publicly funded research is undertaken in universities that also have a significant teaching role. The challenge for developing a more student-centred system is to make sure that these wider interests are not overlooked and that unintended consequences are avoided.

As well as students, who have an interest in the quality and cost of the education they receive [and their broader experience] and the regard in which their eventual qualification is held, these other constituencies are:

- **The government**, which makes financial investments either directly (through residual funding council grants) or through subsidy of the student loan system (commonly known as the RAB charge)
- **Other funders**, such as charitable foundations, that provide grants, scholarships or other investments in higher education
- **Society and the general public**, who expect to see both economic and non-economic benefits from the provision of a university education to a substantial proportion of the population
- **Employers**, who seek to recruit graduates who are well prepared to make contributions as employees
- **Universities themselves**, including their staff, which seek to compete on an equitable basis and deliver diverse activities that meet the needs of students, businesses and the wider community
Secondly, an environment with increasing diversity brings with it difficult questions of how to provide reassurances across a wider range of institutional types and organisations involved in the business of delivering higher education.

Finally, it has been important to set out clearly what an appropriate regulatory response should be, so that it is proportionate and intervenes only where necessary. A primary focus for this report is on the role of external regulation by government, agencies and other bodies, but this is not the only way of providing reassurance concerning quality and sustainability or protecting the student interest. Confidence may also derive from the effects of competition and from the rules and practices put in place by higher education institutions themselves. Indeed, the quality and success of higher education has been founded to a significant degree on institutional autonomy that is underpinned by strong and effective corporate and professional governance. Understanding how a new external regulatory approach can evolve to work with, complement and enhance this is extremely important. Such an approach also needs to be responsive and adapt to an increasing variety of corporate forms and approaches to governance. Badly targeted, blunt or heavy handed external regulation and controls will only serve to put a brake on innovation and competition.

This report is structured in five chapters. Chapter 1 summarises the current higher education regulatory landscape and how regulation is applied. Chapter 2 identifies a number of the pressures for reform, with Chapter 3 setting out how the current framework is adapting in response. Chapter 4 sets out some of the different regulatory approaches that can be adopted in higher education along with the underpinning principles that should guide the development of a reformed regulatory system. Chapter 5 sets out the details of the task group’s recommendations for reform.
1: The current system

The regulation of higher education across the UK is complex and involves a variety of mechanisms that control entry into the sector and influence the behaviour of providers. These mechanisms include external regulation and rules set down by government and its public agencies, market incentives and a variety of well-developed institutional and professional governance structures. How these mechanisms interact varies depending on the corporate status of the institution, its sources of funding and its own internal priorities and structures. The following section looks at the current system of regulation across the UK.

External regulation

Publicly funded institutions

To date, a principal (although not exclusive) mechanism for the external regulation of higher education in England has been through conditions attached to those institutions that are in direct receipt of public funding. These conditions have their legal basis in the 1992 Further and Higher Education Act (referred to in this report as the 1992 Act) and in England are expressed principally through the Memorandum of Assurance and Accountability between institutions and the Higher Education Funding Council for England (HEFCE). Conditions include, for example, requirements around governance, quality assessment, information provision and financial sustainability. HEFCE has established a significant proportion of this regulation itself through well-developed monitoring and assurance processes. HEFCE has operated an effective regulatory approach based on close dialogue and relationships with institutions and appropriate escalation of sanctions where necessary. These conditions also reflect HEFCE’s statutory role in ensuring the assessment of quality in higher education. To fulfil this obligation, HEFCE currently contracts the Quality Assurance Agency to conduct reviews of the higher education institutions that it funds to ensure they meet agreed standards. The QAA also has a concerns procedure for responding to evidence of possible systemic risks to standards and quality.

For further education colleges that offer higher education and are in receipt of public funding the primary accountability relationship is with the Skills Funding Agency (SFA). Where HEFCE funds a college directly, a funding agreement incorporates relevant content

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2 Available at: http://www.legislation.gov.uk/ukpga/1992/13/contents
3 Prior to 1 August 2014 this was known as the Financial Memorandum.
4 In October 2014 HEFCE announced it will consult on future approaches to the assessment of quality in higher education relating to these responsibilities. Further details on the scope and process of this review can be found at http://www.hefce.ac.uk/whatwedo/lt/qa/review/.
from the Memorandum of Assurance and Accountability. The SFA and HEFCE have in place a memorandum of understanding that sets out how they can rely on each other’s oversight arrangements.

The main objectives of the external regulation in higher education to date has been to protect the quality and reputation of the system, to ensure that there are effective controls on the use and expenditure of public investment, and to achieve public policy objectives. Within this regulatory environment, academic and institutional autonomy have been primary concerns and to that end protections are enshrined in the 1992 Act. Institutions that receive public funding and are subject to the requirements above are automatically designated for the purpose of access to student support funding provided via the Student Loans Company (SLC)\(^5\).

The government and parliament exercise the power to control the admission of new entrants into the sector, through the Privy Council, via the conferral of degree awarding powers and university title\(^6\), through Royal Charter or through Act of Parliament. The QAA plays a role in advising on the viability of degree awarding powers or university title applications. In most cases these are granted in perpetuity for publicly funded institutions, but alternative providers that are successful in their application need to reapply every six years.

*Alternative providers*

The broad group of institutions and higher education providers that have not historically fitted within the publicly funded regime outlined above have become known as ‘alternative providers’. The term covers a large and diverse range of providers, operating on a for- or not-for-profit basis, with varying corporate forms and approaches to governance. In many instances these will differ significantly to that of a ‘traditional’ publicly funded higher education institution. A small number have university title and/or degree awarding powers. The majority partner with degree-awarding institutions to validate individual courses, be part of a franchise agreement or deliver Higher National awards via an accreditation body. Regulation for institutions that are not directly publicly funded is linked to designation for student support funding at course level. Courses offered by alternative providers have previously been subject to a designation process administered by the Student Loans Company (SLC) on behalf of the Department for Business, Innovation and Skills (BIS), with the ultimate decision resting with the secretary of state. Designation of alternative providers has recently been strengthened, with responsibility for administering the process passed to HEFCE, although the final decision still rests with government. The process includes

\(^5\) Teaching and Higher Education Act 1998
\(^6\) QAA guidance available at: [http://www.qaa.ac.uk/assuring-standards-and-quality/daput](http://www.qaa.ac.uk/assuring-standards-and-quality/daput)
strengthened scrutiny of quality assurance, financial sustainability and governance\(^7\). However, some of the requirements placed on those institutions that have historically received direct public funding do not currently apply in the same way to alternative providers. For example, there is currently no formal requirement for alternative providers to subscribe to the Office of the Independent Adjudicator\(^8\). A number of designated alternative providers do make limited returns to the Higher Education Statistics Agency, although this currently applies only to the larger providers\(^9\).

**A wider regulatory context**

English higher education is also subject to a significant range of external requirements that either regulate institutions’ teaching and research activities or place requirements on them as bodies that operate in the wider public or charitable interest. A more complete overview of the regulatory system in higher education can be found in the Higher Education Operating Framework, published by HEFCE\(^{10}\). Many of these wider regulatory requirements are not included within the scope of this report, but in a number of cases they interact with or are reliant on the regulatory infrastructure set out above. For example, quality assurance arrangements in higher education are a necessary part of the immigration compliance regime. As noted in the Introduction, many institutions also undertake publicly funded research and innovation activities (to differing extents). Much of this funding comes with its own accountability and/or regulatory requirements and expectations that also interact with mechanisms for providing assurances around teaching. For example, ensuring institutions meet the expectations set out in *The concordat to support research integrity*\(^{11}\) is a requirement set out in the HEFCE Memorandum of Assurance and Accountability.

**The picture across the UK**

The primary focus of this report is on the regulatory implications of recent changes in English higher education, but it is important to put these issues within a UK-wide context. Although approaches to funding and accountability are devolved and governed by separate

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\(^8\) An amendment to the Consumer Rights Bill, passing through parliament at the time of this report’s publication, if adopted would extend this requirement to all designated providers.

\(^9\) All alternative providers with more than 50 students have to make HESA returns from 2014–15 onwards.

\(^{10}\) HEFCE [2013] *Operating framework for higher education in England* available at: www.hefce.ac.uk/media/hefce/content/about/introduction/workinginpartnership/rpg/operatingframework/operating_framework_for_HE_11072013_2.pdf

\(^{11}\) Universities UK (2012) *The concordat to support research integrity* available at: www.universitiesuk.ac.uk/highereducation/Documents/2012/TheConcordatToSupportResearchIntegrity.pdf
legislation, in some areas common approaches or frameworks are used across different countries. This can be seen, for example, with the current quality assurance arrangements. There is also a UK-wide reputational interdependence and changes in one jurisdiction can have potential implications for how UK higher education as a whole is perceived.

In Scotland institutions and the Scottish Funding Council (SFC) enter into accountability and reporting relationships through a Financial Memorandum, which broadly mirrors the reporting requirements for England. The Scottish financial memorandum was recently reviewed and a new version published in December 2014\(^\text{12}\). The SFC has a statutory responsibility to secure the quality of provision in institutions it funds. However, the quality assurance arrangements in Scotland differ from those in England and other parts of the UK, operating an enhancement-led approach called Quality Enhancement Framework\(^\text{13}\). As part of the Financial Memorandum Scottish institutions are also subject to Outcome Agreements that define outcomes related to improving life chances, supporting world-class research and creating sustainable economic growth for Scotland. These are agreed annually between Scottish institutions and the SFC. For English-domiciled students studying at Scottish institutions – subject to a higher fee (up to £9,000) and accessing the English student support system – regulation of their provision remains a matter for the funding and regulatory bodies in Scotland.

The current regulatory framework in Wales is largely shared with England. The powers previously held by the secretary of state in relation to the Education Reform Act 1988 [ERA 1988] and Further and Higher Education Act 1992 [FHEA 1992] were transferred to Wales following the Government of Wales Act 1998, but otherwise the provisions continue to apply to both Wales and England.\(^\text{14}\) This means that universities in Wales are principally regulated by means of the terms and conditions of grant as set by the Higher Education Funding Council for Wales (HEFCW), subject in turn to the terms and conditions set by the Welsh government in its annual Remit Letter. The standard terms and conditions are set out in the Financial Memorandum, which is substantially the same as for England.\(^\text{15}\) HEFCW also makes arrangements for quality assurance with the Quality Assurance Agency. The Institutional Review: Wales is the current review method for higher education institutions in Wales, but from 2015–16 the HE Review (Wales) will be used. These are tailored to the specific requirements of Wales but incorporate the UK-wide quality assurance standards


\(^{13}\) See: [www.qaa.ac.uk/about-us/scotland](http://www.qaa.ac.uk/about-us/scotland)

\(^{14}\) See the National Assembly for Wales [Transfer of Functions] Order 1999 (S.I.1999/672)

\(^{15}\) See HEFCW Circular W08/36HE ’Revised Financial Memorandum and Audit Code of Practice’, November 2008
and arrangements. Likewise, the powers to grant university title and degree awarding powers remain with the Privy Council and the BIS criteria apply to both England and Wales.

There are some differences in the regulatory framework in other areas. The Higher Education Act 2004, for instance, applies to both England and Wales but contains a number of provisions which are specific to each in relation to fee plan arrangements. The key difference is that in Wales, universities are required to provide a fee plan which must be approved by HEFCW and contain measures that address not just the promotion of equality of access (as in England), but the promotion of higher education more generally.

Following further devolution of powers in relation to education, major change to the regulatory framework for higher education in Wales is imminent in the form of the Higher Education (Wales) Bill. The bill is currently in the final stages of its legislative process in the National Assembly for Wales, and is expected to receive Royal Assent by March 2015 followed by implementation by autumn 2017. The bill seeks to provide a new regulatory framework for higher education in Wales which is not reliant on regulation through terms and conditions of grant. Providers of higher education in Wales that are charities would be expected to apply to HEFCW to become ‘regulated institutions’. Regulated institutions would be subject to the new provisions of the bill in return for their courses being automatically designated for purposes of student loan and grant support. HEFCW would gain a range of new powers, subject to various procedural and other restrictions. These include powers to direct institutions enforceable by injunction, powers to issue statutory advice and guidance, powers of entry and inspection, and powers to remove regulated institution status.

In Northern Ireland institutions are also subject to requirements set out in a Financial Memorandum with the Department for Education and Learning, Northern Ireland (DELNI). This broadly mirrors the situation in England. As part of this DELNI ensures that provision is made for assessing the quality of education in the universities and colleges it funds.

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16 This includes the framework for higher education qualifications in England, Wales and Northern Ireland (FHEQ) and the UK Quality Code for Higher Education (the Quality Code), for instance.


18 Since May 2011, Wales has had the power to make its own legislation on education and training with the explicit exception of the research council. (Government of Wales Act 2006, s.108, Schedule 7, subject 5)

19 For the HE (Wales) Bill see: www.senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=9722&Opt=0
Autonomous corporate and professional governance

As well as having one of the most successful higher education sectors in the world, the UK also has one of the most autonomous. Indeed, there is an emerging body of evidence that demonstrates a strong correlation between autonomy and performance of higher education institutions. This autonomy has been essential in ensuring institutions are responsive to the needs of students, have the freedom to innovate, and can provide necessary assurances through effective governance. It is important to recognise that the external oversight outlined above has not been the sole, or even primary, mechanism for providing reassurances in higher education.

All publicly funded institutions subject to the accountability requirements outlined above will have in place autonomous corporate and professional governance that provides oversight within the institution and assurances on quality, effective financial management and sustainability. This is often forgotten in discussions about regulation in higher education, with the emphasis instead placed on the external regulatory architecture. Institutions exercise discretion over the programmes that they offer and their own financial affairs within a governance framework. Governance for publicly funded institutions in English higher education is guided by the Committee of University Chairs (CUC) code of good governance, which provides a common framework across institutions. Combined with expectations contained in the Memorandum of Assurance and Accountability, this has resulted in an effective co-regulatory structure with the external regulation outlined above. It has ensured that institutions’ own financial governance and quality assurance regimes meet necessary standards to award degrees and access public funds and/or the student support system. In Scotland the SFC requires the governing body to comply with the principles of good governance set out in the Scottish Code of Good HE Governance. The future of higher education governance in Scotland is currently subject to consultation by the Scottish Government.

The strength of governance in publicly funded institutions has negated the need for centralised or overly interventionist external regulation and facilitated a culture of effective co-regulation. Requirements such as those placed on public institutions under the Freedom

21 For example see www.bruegel.org/publications/publication-detail/publication/34-why-reform-europes-universities/
22 This document has recently been revised and can be found at http://www.universitychairs.ac.uk/wp-content/uploads/2014/12/Published-Version.pdf
24 http://www.scotland.gov.uk/Publications/2014/11/2389
of Information Act 2000 have also ensured that governance arrangements are clear to
students and the public more widely, as do expectations of the Charity Commission for those
institutions that are registered charities.

Governance outside of the publicly funded sector exhibits a much wider range of
approaches, although with variable efficacy regarding the assurances that can be derived.
Although there is no code for alternative providers analogous to the CUC or Scottish
documents mentioned above, nor freedom of information requirements on transparency,
there is governance oversight through, for example, quality assurance requirements linked
to designation for student support or where an institution is applying for or holds degree
awarding powers or university title. This external regulation can provide assurances in the
absence of clear or well developed internal processes.

2: Pressures for reform

The higher education sector in England has been going through a number of substantial
changes. These include significant shifts in the mechanisms through which funding for
undergraduate teaching is directed into the sector and the degree of freedom that
institutions have to recruit students. In addition the shift to a fees based system has also
opened up space for alternative providers to offer undergraduate provision. These changes
are increasing the market dynamics in the sector, including greater expectations from
students who are now responsible for the costs of their education. In this context the
existing regulatory arrangements for the sector are under pressure to meet these new
challenges and demands. The following section explores some of these pressures for
reform in more detail.

Rebalancing of funding and lifting of student number controls

As noted in Chapter 1, the external regulation for publicly funded institutions has historically
been set out in the conditions universities agree to in return for public grant funding. The
shifting of the balance of funding towards fees and loans (see Figure 1), following the
government’s reforms that came into effect in 2012, means that the effective application of
regulatory requirements for these institutions becomes increasingly difficult. In the current
legislative framework these publicly funded institutions are also designated automatically
for student support, meaning that there is no direct regulation associated with accessing
this funding (as these institutions were already regulated by the conditions of grant funding).

25 For example, see www.lfhe.ac.uk/en/research-resources/published-research/research-by-
theme/governance/fielden-private-providers.cfm
A number of measures are being taken to adapt the current system (for example see the Agreement on Institutional Designation in Chapter 3), but these are time limited and not designed as long-term, sustainable solutions.

**Figure 1: Rebalancing of teaching income, 2011–12 to 2015–16**

Alongside a shift in funding there has also been a phasing out of restrictions on the overall number of students that institutions are able to recruit. This is leading to a system that is more responsive to and able to meet demand, and to greater competition between providers. This is already bringing with it significant benefits in terms of the investment being made in the student experience by institutions. The potential for unrestricted expansion across the system does, however, mean there is an increased expectation that assurances are provided around the student experience. For example, the most recent grant letter to HEFCE from the secretary of state for business, innovation and skills and the minister for universities and science in 2014 has asked it to develop mechanisms that protect and assure the quality of the academic student experience when student number controls are removed in 2015–16. This is a particular issue in relation to less established providers that are unable to demonstrate a strong track record or appropriate assurances. The government has introduced student number controls for alternative providers, recently confirming that the student number cap will only be lifted for those with degree awarding powers. This has been introduced alongside a requirement for all other alternative providers to be re-designated every year and a strengthening of requirements.
Growth in diversity and providers of higher education

The growth in alternative provision brings with it increased choice and can act as a stimulus for competition. A stated objective of the government’s 2011 White Paper, *Students at the Heart of the System*, was greater diversity in provision.\(^{26}\)

In this context the size of the alternative sector has grown in recent years. The number of providers offering courses with specific designation has grown, as has the number of courses that those providers offer. There were 98\(^{27}\) alternative providers offering courses with specific designation for student support for the 2014/15 academic year. There are nine institutions not in receipt of HEFCE funds that have degree awarding powers, seven of which are designated for student support. There are a total of 652 listed bodies that offer courses in the UK that can lead to a degree from a recognised degree awarding body. This growth is reflected in the number of loans issued to students enrolled on these courses and the total amount of student support funding associated with this type of provision, illustrated in Figures 2 and 3 below. The fee support for students at alternative providers was increased to £6,000 per year in 2012–13 (from £3,375) as part of the wider package of funding changes.

**Figure 2: Number of loans issued to students at alternative providers in England, 2006 to 2013**

\[^{26}\text{See White Paper para 4.6}\]
\[^{27}\text{Source: HEFCE and BIS. This number was correct at the time of this report’s publication, but it is recognised that due to the expansion in the alternative higher education sector this will be subject to change.}\]
Count is the number of loans paid out to students. Figures for maintenance loans for England-domiciled only. Fee loans include European domiciled students from 2010 onwards. Source: SLC

**Figure 3: Loan outlay for students enrolled at alternative providers in England, 2006 to 2013**

Fee loans include EU-domiciled students from 2010 onwards. Source: SLC

This expansion and increased diversity of approaches is not necessarily in itself a cause for concern. However, it does present a challenge to the historic regulatory framework’s ability to provide necessary reassurances for students and other constituencies, and maintain confidence in the proper use of the public subsidy provided to these providers via the loans system. This is a particular issue where governance or internal systems are less well developed or do not meet expectations. A National Audit Office report published in December 2014 highlighted a series of concerns relating to the provision of student support at some of these providers and the lack of appropriate oversight28. Similar concerns were also expressed in a Public Accounts Committee hearing in December 201429. As noted above,

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regulation of alternative providers has been increasingly strengthened and controls on student numbers continued for those without degree awarding powers.

To provide effective reassurances it will be important that all providers can at the very least demonstrate that they meet minimum expectations on quality, sustainability, provision of data, student complaints and the student experience. When accessing the student support system further reassurances may be required, taking a risk based approach.

**Increasing student expectations**

There is an increasing expectation that the higher education regulatory system should be explicitly focused on the interests of students, as the principal and immediate beneficiaries of higher education. Discussions held by the task group with stakeholders, including the National Union of Students (NUS), have indicated a number of dimensions to the student interest, which include:

- Students having adequate information to help make informed choices
- Reassurances around the student experience, including quality and the sustainability of institutions, as well as effective recourse and complaints procedures
- Transparent and fair terms and conditions, and security of the student’s interest in the event of provision being discontinued
- Students being adequately represented and engaged as partners within institutions and the wider regulation system

In March 2014 the then Office for Fair Trading (OFT) published a report of a call for information that examined the role of choice and competition in higher education; it looked at whether these are working to the benefit of students in higher education, and whether any associated risks are being managed effectively.

The OFT report found that that the regulatory framework is increasingly at odds with a system based on student choice. It also highlighted a lack of arrangements for protecting students in the event of a course or institutional closure and raised concerns about the lack of a level regulatory playing field. These are important concerns, many of which were also reflected in this task group’s subsequent discussions with the OFT and the Competition and Markets Authority (CMA), which took over many of the OFT’s functions from April 2014. Further to the OFT report the CMA is taking forward a consumer protection review and a review of the regulatory system. These will be published in early 2015 and we have valued the close dialogue we have had with the CMA in developing this report.

30 See: [www.gov.uk/cma-cases/higher-education-sector-call-for-information](http://www.gov.uk/cma-cases/higher-education-sector-call-for-information)
The task group heard from the NUS about how it thought the student interest should be best protected in the new higher education environment. The NUS expressed an overall aim for a system that encourages a positive relationship between students and institutions and a culture of co-creating education, rather than a simple consumer or transaction based relationship. Although it was recognised that many important issues have been raised by the OFT report, there was concern that this relationship should not be fostered principally through a regulatory regime that relies on recourse to consumer law. This concern arises in part from the potential for costly and drawn-out disputes in the courts that would be beyond the financial means of many students. Concern was also raised that this would be primarily punitive and not in line with the collaborative relationship that the NUS advocates between students and institutions. The task group shares the NUS’s views on this and recognises the importance of ensuring that the student interest as co-creators of education is embedded effectively throughout the regulatory regime, as well as within the governance of institutions.

**Increasing regulatory complexity and burden**

The current regulatory system is becoming increasingly complex and difficult to understand for all interested parties, with multiple actors and lines of regulation and accountability across different providers. Entry requirements or formal boundaries around the wider higher education sector can also be unclear. From a student and public perspective this presents difficulties when seeking information or reassurance as to the authenticity, quality and sustainability of a provider in the system. This complexity also presents significant challenges for governance and coordination of regulation and the relationships between individual players within it. For example, discussions the task group held with the Office of the Independent Adjudicator and the QAA highlighted the challenges of effective information sharing at a strategic level.

Many of those that provided input or gave evidence to the group also highlighted the problem of regulatory ‘mission creep’ and overlap. This was seen as a particular risk in the area of quality assurance, where the QAA has been required to respond to and meet different regulatory demands while also delivering against its core mission. Concern was also raised about the potential overlapping roles of HEFCE and the Office for Fair Access (OFFA) in terms of requirements and monitoring on social mobility and access. The potential for further ‘bureaucratic drift’ in the absence of clear strategic coordination is a concern.

The burden and cost that regulation places on higher education providers has also been raised as a significant concern. In particular, there is a risk that an increased diversity, with
different organisational forms and pedagogical models, may produce a response that increases the burden on all institutions as regulators seek to monitor and manage a wider diversity of risks by taking a one-size-fits-all approach. The notion of a ‘level playing field’ where regulation is applied equally, rather than equitably, may only add to this. In Australia the introduction of the Teaching Quality and Standards Agency31 set out to avoid some of these problems through introducing a risk based approach. However, in reality this increased data collection and placed a burden on all institutions. These concerns led to a review of the approach and it will be important to draw lessons from this when considering regulatory reform in England.

The sector is subject to a range of compliance requirements. As well as requirements from HEFCE and the QAA, and those placed on the Higher Education Statistics Agency to collect data, there are quality requirements set by accreditation, professional and statutory regulatory bodies that are independent of the sector. In addition, there are a variety of demands placed on institutions as private bodies in receipt of public funds. Higher education providers in receipt of HEFCE funds are designated public bodies and as such comply with freedom of information and European Union procurement regulations, but are also required to submit corporation tax returns despite rarely reporting a liability. Freedom of information requirements relate to a legacy of direct public funding, so are not universally applied across all higher education providers. As well as the burden this places on some institutions, it also raises a significant question as to whether the application of freedom of information rules to only part of the sector is appropriate in a more competitive and student-focused operating environment.

Efforts and commitments to reduce burden in the past have seen qualified success in terms of managing estimated costs to the funders and regulators and the sector. For example, HEFCE implemented a programme to monitor and reduce the costs of its accountability requirements between 2002 and 2009. Reviews of this work by PA Consulting found a decrease in the cost of accountability. However, there is currently no comprehensive overview of the cost of regulation in higher education and feedback from Universities UK members would suggest that many initiatives to reduce burden have failed to translate into the reported experience.

31 See: www.teqsa.gov.au/
3: The response to date

Many of the issues raised in Chapter 2 have already been recognised by government and other actors in the system. In August 2011 the Department for Business, Innovation and Skills (BIS) published its *Technical Consultation: a new fit for purpose regulatory framework for the higher education sector*. This set out how the regulatory environment in higher education would need to evolve to implement policy proposals contained in the White Paper. Among its proposals was to shift the emphasis of HEFCE’s role to become a ‘lead regulator’.

Full implementation of the proposals, such as changes to the role and powers of HEFCE, would ideally have required amendments to primary legislation, not least because HEFCE is defined by the 1992 Act as a funding body. In its response to the White Paper and Technical Consultation in June 2012, however, the government confirmed that it would not be taking forward legislation in this area in the present parliament. The government’s explanation at the time was that it would be too early to seek changes to primary legislation because the full effects of the new funding arrangements were not yet known.

Alongside these developments, the main higher education agencies and sector groupings came together to form the Interim Regulatory Partnership Group (IRPG) to consider the evolving regulatory framework. In its response to the White Paper and Technical Consultation, and in the absence of legislation, the government confirmed the IRPG [now the Regulatory Partnership Group (RPG)] as the primary mechanism for overseeing the delivery of a number of outstanding policy objectives relating to regulation.

The RPG and related responses

The RPG has no powers of its own, but has played a role in bringing together different interests and actors and has provided a focus for a number of developments. For example, the recent Agreement on Institutional Designation (AID) developed by Universities UK, GuildHE and the Association of Colleges, in partnership with BIS and HEFCE, is an attempt to make a more direct link between automatic designation for student support and current public funding accountability requirements, while maintaining the protections around institutional and academic autonomy contained in the 1992 Act. This addresses the issue of an ‘accountability gap’ where institutions can automatically access student support funding, but have diminishing public funding. These measures are, however, designed to be

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33 See: [www.hefce.ac.uk/pubs/year/2014/c1152014/name,87297.en.html](http://www.hefce.ac.uk/pubs/year/2014/c1152014/name,87297.en.html)
temporary. The AID itself is explicitly time limited and will expire in July 2017. In the absence of any more formal arrangements at that time, important questions over the desirability of continuing with a temporary arrangement, particularly in terms of providing reassurances for good use of public funding, will need to be addressed.

Within the context of the RPG, HEFCE has also led on the development of the operating framework and a register of providers. The operating framework is a welcome and useful development. For the first time it sets out how the regulatory system works and identifies the different actors within it. While a step towards greater transparency and clarity, it was only intended to describe the system rather than address its shortcomings and complexity. The new HEFCE register of providers is also a welcome initiative, which provides in one place an accessible directory of higher education providers that are within the regulatory scope of a number of different requirements. However, at present the register is only able to provide reassurances pertaining to the regulatory framework currently in place and its ‘regulatory status’ is limited. This differs, for example, from a register such as that held by the General Medical Council, which acts as the principal regulatory gateway for accessing the medical profession, providing clear reassurances to patients that those on the register have met a set of clear and commonly applied standards and are fit to practise.

In June 2013 the government introduced a strengthened system for designating alternative providers for student support. The responsibility for processing this has been delegated to HEFCE, although legally the final decision rests with secretary of state. Recognising the challenge of a more diverse higher education sector, the RPG undertook a piece of work examining the implications of this new landscape for the regulation of higher education, with a particular focus on corporate forms. It concluded that corporate form is not the most important or determining factor in protecting the student and wider public interest. Other critical factors were corporate responsibility for the contract with the student, the way in which governance is used to secure academic integrity, and the arrangements in place for securing the student interest in the case of course withdrawal or institutional failure. A number of recommendations relating to these points were raised in the course of the task group’s work and have been considered within the proposals in this report.

The RPG’s corporate forms report also raises the concern that wider regulatory requirements – such as access and widening participation, student complaints and information provision – are currently applied inconsistently across different types of provider. This concern about an uneven playing field is a theme that has come up throughout the work of the task and finish group. This is of particular concern for those with an interest

34 HEFCE Register of HE providers: www.hefce.ac.uk/whatwedo/reg/register/
in the quality and sustainability of provision, notably students, wishing to understand what regulations apply to different providers and what reassurances they can derive from this.

Recognising concerns over increasing regulatory complexity and burden for providers, the RPG has also started work, through the Higher Education Data and Information Improvement Programme, to streamline data and information requirements.

**Addressing the student interest**

Individual higher education providers continue to be the primary overseers and protectors of the student interest through the operation of internal assurance arrangements. At an institutional level a more competitive environment is also impacting on the student interest by driving up investment in, and the quality of, the student experience. The impact of market-based tools such as the National Student Survey (NSS) and Key Information Sets has also been significant.

In March 2014 BIS published a national assessment of action to improve the student learning experience. This showed considerable investment by institutions in enhancing the student experience across many areas. This reinforces the findings of Universities UK’s report *Where student fees go*, which documents the substantial investment being made across the sector. The outcomes of the most recent NSS also showed consistently high levels of student satisfaction. A report published by Which? in November 2014 has, however, identified a number of challenges from the student perspective and suggests that the impact of market-based reforms on the student experience is yet to be fully realised.

The student interest has also been increasingly integrated into the strategies, governance and accountability requirements for external regulation. For example, there is a greater involvement of students in the boards and governance of bodies such as HEFCE and the QAA, and OFFA now requests that universities involve students in the development of their access agreements. A number of bodies have also reviewed their policies and procedures to ensure a greater focus on the student interest. For example, new guidelines have been developed by the Office of the Independent Adjudicator to help improve the way that universities deal with student complaints and academic appeals.

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36 UUK [2013] *Where student fees go* available at: [www.universitiesuk.ac.uk/highereducation/Pages/WhereStudentFeesGo.aspx](http://www.universitiesuk.ac.uk/highereducation/Pages/WhereStudentFeesGo.aspx)

The new Memorandum on Assurance and Accountability, issued by HEFCE, gives a greater and more explicit focus to the responsibility of institutions to consider the collective student interest. In terms of institutional governance most institutions have student representation on their governing body and student engagement across the institutional governance and operating processes. The HEFCE-supported student engagement partnership is providing an important focus for coordinating and promoting student engagement. Universities UK has also worked closely with the NUS to promote the use of student charters and build partnerships between students and their institutions\(^38\).

**Conclusions on the current regulatory environment**

The current approach to regulation in higher education is becoming increasingly out of step with changes that have been made to the funding and operating environment, and the notion of a student-centred system. This is despite laudable work undertaken through the RPG to adapt the existing regulatory framework. There is also a lack of clearly defined leadership and strategic oversight of the regulatory system, which if not addressed will lead to problems of regulatory creep, increasing fragmentation and gaps in regulatory coverage.

These issues will therefore need to be dealt with as part of a strategic response, leading to a reformed external regulatory framework for higher education that has greater coherence and relevance to the current operating environment. Given that the legislative foundations of the current system link regulation principally to public funding, it is difficult to see how this would be achieved without changes to primary legislation.

In proposing changes to primary legislation it is important to stress that a new higher education bill is not the goal *per se*, and poorly considered provisions, however well intentioned, may be damaging. It is essential that fundamental protections enshrined in the current higher education legislation are retained, notably those that maintain academic freedom and institutional autonomy through an arms-length relationship with government. The rest of this report picks up these challenges and considers how the regulatory environment will need to evolve to address them.

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4: Towards a reformed regulatory environment

When considering proposals for addressing the concerns with the current system, the task group felt it important to first explore those areas where regulation will be required and necessary in a reformed system, some of the main regulatory approaches that can be adopted and the principles that should underpin any new system.

In what areas of higher education is assurance required?

The drivers for reform set out in Chapter 1 do not necessarily change the broad areas of higher education activity where assurance is required. In the context of previous discussion on the need for assurance around quality, equity and sustainability, these areas can be defined as:

- academic standards and quality
- the student experience (broadly defined)
- recourse for students
- provision of information
- financial sustainability
- good governance

What does change is the need for requirements across these areas to be focused more explicitly on providing reassurances around the student interest, rather than as part of a direct accountability relationship between institutions and government. There is also a need for requirements to be applied across a wider range of providers, but in a risk based and equitable way.

In relation to regulation around the broader student experience, one area that was noted earlier in this report as a new concern and that is receiving particular attention is student protection. This relates to what might happen in the event of an institutional or course failure or closure, both in terms of the opportunity for students to continue their studies and the possible provision of appropriate compensation. Increasing expectations in this area are part of an international trend; for example, such protections have recently been put in place in Australia, New Zealand and Ireland and are underpinned by legislation. This issue has been a consistent theme in all of the task group’s evidence sessions with stakeholders, including the NUS. It was also a key issue in the report on regulation by the Higher Education Commission (HEC)39, which proposed a student protection scheme as a potential solution to this problem. Although the evidence of potential risk of failure across the sector

39 See: www.policyconnect.org.uk/hec/research/report-regulating-higher-education
is currently unclear, the task group considers the provision of reassurances around continuity and student protection to be extremely important for students – and indeed for many other constituencies – in a changed higher education environment.

The task group has considered the HEC proposal carefully, but does not believe that an insurance scheme for the whole higher education sector is needed; nor would it be proportionate to the problems it is proposing to address. A universal insurance scheme would only partially address the problem and would not deal with the issue of continuity of study. Given the points made earlier in this report about students being co-creators of the higher education experience, and recognising the personal commitment they make, continuity of study in these circumstances should be the priority. This does not mean, however, that institutions should not be taking more responsibility in this area. A co-regulatory approach for addressing this issue, which focuses on developing assurances around continuity of study, is therefore set out in the recommendations below.

**Strategic policy interventions**

There are areas where government will want to continue to make interventions in higher education, sometimes with funding interventions or incentives, to achieve public policy objectives or address wider national policy concerns. For example, residual HEFCE funding is being targeted to support strategically important and vulnerable subjects where it is deemed in the national interest. This is also of interest to employers who may rely on graduates with certain skills. This is essentially an intervention to address what could be regarded a market failure. Government would also be likely to continue to set out expectations for access and participation in higher education and seek reassurances on the quality and integrity of the research it funds. Furthermore, even with a shift to a subsidised loan system the government would want to have some guarantees over the effectiveness and value for money of this investment.

**Effective market competition**

Higher education institutions have always operated in a competitive environment, both nationally and internationally. With the introduction of the new fees system in England lifting of student number controls, the question of ensuring effective competition becomes a more significant regulatory concern. Responsibility for market competition sits outside of the traditional higher education regulatory architecture and with the competition authorities, notably the CMA. As noted above, the OFT published a report on the higher education sector. That report did not raise significant concerns around the lack of competition, or anti-competitive practice, in higher education and we welcome the CMA’s acknowledgement that
the higher education sector has features that distinguish it from a conventional market. It did, however, suggest that the sector needs to increase its understanding of the issues, particularly to ensure that concerns about breaching competition law did not hold back sensible collaborations.

**How should regulation be applied and maintained in higher education?**

As noted above, to date, the external regulation of publicly funded higher education institutions in England has been exercised principally, although not exclusively, through conditions attached to the receipt of public funding. Alongside external regulation, higher education is also subject to strong corporate and professional governance, and other pressures on institutional performance. Indeed, the student interest is primarily overseen and protected by the operating and internal assurance arrangements of the higher education provider at which students study, recognising these will differ depending on the provider.

It will be important, therefore, to ensure that external regulation is proportionate and adds value to this, emphasising the relationship between student and institution, rather than between institutions and the state. It is the view of the task group that external regulation is there to provide oversight and reassurance, working alongside institutional governance. It should not be seen as the only or principal mechanism for assurance. This distinction is often lost in much of the discussion of this topic.

In summary, we recognise that there will be continued expectations for statutory oversight of governance, quality and financial arrangements in some form. But we believe this should only apply where absolutely necessary, and external regulatory powers should be clearly limited to only those necessary to provide appropriate safeguards, oversight and reassurances.

*Regulation associated with public and student loan funding*

There will remain an overall public and government interest in higher education, even with an increase in the proportion of income derived from student fees, backed by the loan system. A direct public and government interest will remain through the residual public teaching grant funding provided to institutions. This will continue to require public accountability for the good use of funds, but will be a diminishing route for funding for teaching; accordingly it is reasonable question the proportionality of requirements currently attached to it. As noted above, this also raises questions over the appropriateness and proportionality of associated freedom of information and EU procurement requirements.
The government also has a large stake in the subsidised loan system underpinning the graduate contribution scheme, which is now, overall, the primary source of undergraduate teaching funding. The principal regulatory concerns for government in relation to student support funding to date have been the control of student numbers, which controls costs in the system, and to avoid fraud (both by institutions and students). Within the context of issues set out in this report, many of the regulatory concerns that have traditionally been associated with direct public funding, such as quality assurance, financial sustainability and information provision, are increasingly relevant when considering the assurances required for accessing the loan system. Indeed, the AID mentioned earlier in this report attempts to make a more explicit link between these traditional requirements and receipt of student loan funding. These requirements are also now, at least in part, features of the course designation process for alternative providers. Given this convergence, there is a strong case for considering how requirements for accessing direct public and student support funding can be streamlined. The distinction between reassurances provided at course and institutional level also needs reviewing. A regulatory response to the concerns set out in this report should seek to provide reassurances at the level of the institution. Course designation already requires checks at the institutional level, suggesting there is already a convergence between course and institutional designation.

There will be providers within the system that do not currently, or do not wish to, access this funding. It will be important nonetheless that if they are providing higher education they are able to demonstrate adherence to a core set of expectations around quality and standards and sustainability. This is in the interest of many of the constituencies outlined in the introduction to this report.

Co- and self-regulation

Related to the importance of governance is the role that co- and self-regulation have played in the sector. This has enabled autonomy to be maintained while achieving policy and/or regulatory objectives. There are many examples where co- and self-regulation has been an effective mechanism for achieving regulatory objectives and outcomes in higher education. A good example of co-regulation is the broad framework for quality assurance. As well as discharging statutory requirements on behalf of HEFCE (mainly around quality assessment) the sector works with the QAA to support and develop quality assurance and the academic infrastructure within institutions, recognising that ultimately the standards and quality of higher education rest primarily with autonomous institutions. For example, the Quality
Code is wider ranging than any of the funding bodies’ statutory responsibilities. Effective quality assurance is also underpinned by the external examiner system. This is a widely admired self-regulatory approach that is unique to the UK and fundamental to the maintenance of academic standards. It is important that reforms of the quality and wider regulatory system ensure that effective co- and self-regulatory approaches continue.

Notwithstanding the historic effectiveness of co- and self-regulation, the OFT’s report on higher education raised some concerns over the transparency and accountability of such approaches. Furthermore, the growing diversity of providers and growing competition may place limits the extent to which a self-regulatory system is likely to exert sufficient disciplinary power over all providers.

The task group was reassured in discussions with the CMA that higher education is seen as a sector where self-regulation can continue to play an important role. The CMA’s Policy statement: The role of self-regulation in the OFT’s consumer protection work provides a useful checklist of the factors that contribute to the success of self-regulation; this can provide an effective tool for assessing and reviewing the effectiveness of self-regulation in sector as the landscape evolves.

**Market mechanisms**

Market based mechanisms are playing an increasing role in higher education. The shift toward a tuition based funding model, allied with deregulation of student numbers, helps student choice and increases competition between institutions. Furthermore, entry of new providers into the sector will expand the number of places and the types of institutions on offer to students. Evidence outlined above suggests that this is having a positive impact on the student experience, although the full impact of these changes in terms of driving quality and student outcomes will take time to be fully realised, and needs further evaluation.

For a market mechanism to work effectively, autonomy is a primary condition along with a regulatory regime that is competitively neutral and keeps external requirements and conditions to an absolute minimum. Indeed, excessive external regulation will only act to negate the impact of market based approaches that can lead to positive student outcomes. Other mechanisms desirable for a market to operate effectively and enhance competition and choice to the benefit of students include:

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40 See: [www.qaa.ac.uk/assuring-standards-and-quality/the-quality-code](http://www.qaa.ac.uk/assuring-standards-and-quality/the-quality-code)

• Provision of effective information
• Ability of customers to switch between providers
• A method for protecting customers in the event of providers exiting the market

The first of these is being supported by requirements on institutions to present information through the Key Information Sets (KIS). The KIS provide comparable sets of information about full- or part-time undergraduate courses so that students can evaluate their options, alongside other sources such as league tables. The provision of such information is also subject to review and is being strengthened based on the needs of students\textsuperscript{42}. Incorporated within the KIS, the NSS plays a significant role in informing the choices of prospective students and provides data that helps institutions to enhance the student experience. Again, the NSS is kept under review to ensure it is effective in supporting competition and choice. In addition, the sector recognises the importance of providing transparent, clear and relevant information to applicants and students on terms and conditions. The CMA is preparing compliance advice that can help institutions understand their legal responsibilities in this area.

In relation to students’ ability to switch between providers, concern has been raised about the present difficulty for students in changing courses, with or between institutions, and about the clarity of information provided concerning their options\textsuperscript{43}, arguably restricting the ability of a market to operate effectively. As noted earlier in this report, studying for a degree is not, however, purely transactional. It requires investment from both the institution and the student, and over time the student will accumulate knowledge and expertise, which is often specialist to a particular discipline. The notion of co-production is, for example, very much part of the NUS’s vision for regulation in higher education. Furthermore, demand for changing courses is often low. This notwithstanding, higher education institutions have undertaken work to support switching and most have policies and procedures in place for facilitating students to change course and institution. The transfer of credit is not needed to ensure switching, but it does provide a universal ‘currency’ to support this and a framework for the use of academic credit in England has been established\textsuperscript{44}. A significant number of institutions now use this framework. In addition, the student funding regulations provide a safety net for those students who decide to transfer to another programme or institution and need to repeat a year.

As noted above, the issue of student protection in the event of course or institutional closure has grown in importance and there is currently a gap in the regulatory provisions in this

\textsuperscript{42} See: \url{www.hefce.ac.uk/whatwedo/lt/publicinfo/kis/kisrd/}
\textsuperscript{43} For example, see CMA call for information report
\textsuperscript{44} See: \url{www.qaa.ac.uk/assuring-standards-and-quality/academic-credit}
area, particularly around ensuring continuity of study. The task group’s proposals in this area are set out in Chapter 5.

**Underpinning principles**

Building on the discussion in this report and in moving to develop proposals for the evolution of the higher education regulatory environment, the task group felt it important to set out a number of underpinning principles. These are effectively the group’s objectives for a reformed higher education regulation environment and guide the recommendations in this report:

- There are multiple constituencies legitimately entitled to seek assurance concerning the quality, equity and sustainability of higher education: students, government, other funders, employers, society at large, and higher education institutions themselves.

- As the major funders and initial beneficiaries of higher education, the interests of students are paramount.

- External regulation provides one mechanism for the provision of the requisite assurance, but should be considered as the approach to be adopted when other mechanisms are inadequate.

- The autonomy of higher education institutions is of prime importance to the success of the sector. The regulatory environment needs to recognise explicitly the significant role that institutional governance plays in safeguarding the student and wider public interests, as well as its role in balancing the different interests and obligations faced by a diverse range of institutions.

- There continues to be a strong public interest in higher education. Where there is ongoing public investment, accountability mechanisms should be transparent, proportionate and seek to keep the regulatory burden on institutions to a minimum.

- There is a public interest in protecting the strong international reputation of UK higher education. Regulation should seek to safeguard the quality of higher education and promote a strong, vibrant sector that is able to compete internationally.

- An inflexible approach to regulation that ignores the diversity of the sector is neither appropriate nor likely to be effective; in short, equality may be the enemy of equity.
• Co- and self-regulation have an important role to play in higher education. The principle of self-regulation should be combined with appropriate transparency and public accountability.

• In serving the interests of society at large, strategic interventions by HEFCE (or equivalent) will continue to be required, and this should be guided by a regulatory framework.
5: Recommendations for reform

Building on the discussion in this report, and guided by the principles set out at the end of Chapter 4, this chapter sets out a series of recommendations. These are intended to be the building blocks for reform and we look forward to working with government, HEFCE and other stakeholders to take these forward, particularly through legislative change, where further detail or guidance will be required.

1. Strengthening the regulation of entry to the higher education sector: an authoritative register

- The current higher education register should be further developed and repositioned as a primary regulatory tool that sets out robust and transparent requirements for all providers.

The development of a higher education register by HEFCE has been a first step in providing greater transparency and clarity on the number and type of providers in the system and the regulations that apply to them. This is beneficial to students and their families. As noted in Chapter 3, however, at present the register has no formal ‘regulatory status’ and does not address problems with the complexity of the current system. To address this will require consolidating current regulatory requirements into a series of formal gateways that all providers would have to pass through to be on the register. This will ensure that the register provides an authoritative list of all higher education providers that meet agreed common requirements. We propose it designated the Register of Approved Higher Education Providers. Any institutions or organisations providing higher education in England not on the register would not be able to claim to be an approved provider.

Recognising the diversity of provision within the system the register will need to have the flexibility to allow differential requirements within it, leading to different levels of reassurance, but nevertheless be underpinned by robust core requirements. To avoid undue complexity, but ensure sufficient flexibility, we propose three core levels:

A. Providers must meet minimum requirements on quality assurance, information, arrangements for student complaints and disputes, governance and financial sustainability, provision of data and student protection (see recommendation 5 below). This would not, however, lead to automatic access to student support or direct public grant funding, but rather provide a basic level of assurance for all institutions or organisations wishing to provide higher education.
B. To access student support funding and/or direct public teaching funding providers should meet additional conditions on:

- access (if charging above £6,000)
- maximum fees
- appropriate accountability required for use of public funds, and audit

This proposal would streamline current requirements around access to student support and public funding. This recognises that many of the current conditions required to safeguard the student and public interest are the same and need to be consistently applied. Those wishing to access public funding would also of course need to meet regulatory requirements, such as those around freedom of information and procurement.

C. Providers choosing to access public research grant funding would need to meet additional conditions that are already in place for this funding. This recognises the wider roles of institutions and that there are some limited additional requirements (for example, around research integrity and open access publishing) that not all institutions at level B would wish or need to meet. Other funders of research, such as charities, would also be able to derive reassurances from these requirements at their discretion.

Specific details and conditions for each level of the register would need to be developed, as would requirements for ongoing application and monitoring of requirements for the register. On the latter a lighter touch approach should be applied for those institutions on the register that are able to demonstrate an extended record of meeting or exceeding all the requirements, thereby minimising the regulatory burden. In this regard it will also be important to explore the role that triggers can play in prompting closer regulatory scrutiny where it is required, with appropriate escalation of interventions. The ultimate sanction would be removal from the register.

We believe that separate course and institutional designation is becoming increasingly undesirable and most confidence will be derived from meeting register entry requirements at the institutional level.

The register should also contain information on those institutions that have degree awarding powers and/or university title, and the additional requirements and assurances this provides, as well as information on accreditation arrangements and associated quality assurance.
We propose that HEFCE (or its successor – see below) is made the holder of the register, with a requirement that the register is made available on an open platform that is easily assessable and searchable.


- **HEFCE should take on a wider role to provide effective coordination and leadership for higher education regulation, alongside its well established funding roles. The Office for Fair Access should be combined with CHEE. Recognising this wider role HEFCE should be renamed the Council for Higher Education England (CHEE).**

We recognise the need for, and support the existence of, a national body that would act as lead regulator for those areas where assurance requires external regulation, providing effective coordination and strategic leadership to the regulatory environment. Its mandate, derived from government (currently BIS), would be to provide assurance while maximising the autonomy of individual institutions that are able to demonstrate they meet the robust requirements expected of a higher education provider. It would also have a role for promoting effective co- and self-regulation. The task and finish group proposes that HEFCE evolves to take on this wider role and supports the HEC proposal to rename HEFCE the Council for Higher Education, set out in their report on higher education regulation. We would point out, however, that this change will need to reflect the continuation of its specifically English role. This would mean renaming HEFCE the Council for Higher Education England (CHEE). We would stress the importance of HEFCE’s continued public funding role for teaching, research and knowledge transfer. We see no valid reason why roles for regulation and strategic funding for teaching and research cannot sit side by side. Indeed, this avoids duplication of requirements and accountability from separate bodies. In making this shift we would stress the importance of maintaining the current effective HEFCE operating culture that is based around constructive dialogue and appropriate escalation of issues and concerns. Legislative change will be required to establish CHEE’s remit and close scrutiny should be given to defining and limiting its powers to maintain an arms-length relationship and protect institutional autonomy.

As the body charged with providing assurances to the constituencies outlined in the introduction to this report, CHEE will oversee, among other matters, issues of fair access and quality assurance. We see no compelling reason why the former should be achieved through a separate body given the significant overlap and therefore propose that the present Office for Fair Access be incorporated into CHEE. There remain valid reasons for the oversight of academic quality to be performed through a separate body contracted by CHEE.
(see recommendation 4), not least given the importance of co-regulation and co-ownership in this area.

We see a continued role for CHEE as the charity regulator for exempt charities and it will be important for it to work closely with the CMA to mediate on the application of consumer and competition regulation in higher education. The creation of CHEE as a lead regulator is also an opportunity for it to lead on streamlining requirements across regulators and for providing assurance to them, as well as monitoring the costs of regulation and acting to reduce these.

In summary, CHEE’s role would therefore comprise:

- Funding teaching, research and knowledge transfer
- Maintaining the register of higher education providers
- Applying and monitoring conditions attached to registration (including continuation of responsibilities for ensuring provision is made for assessment of quality) and applying appropriate sanctions where appropriate and necessary
- Leading the coordination of higher education regulation
- Working in partnership with the sector to develop mechanisms for student protection (see recommendation 5)

We recommend that CHEE be required to provide an annual report to parliament on its activities, given the strong public interest in higher education.

3. Continuing co- and self-regulation

> We reaffirm the importance of co- and self-regulation in higher education, but recognise the need for greater transparency and accountability. In its new role we propose that CHEE reviews the application of existing and new self-regulation initiatives against the CMA’s principles for good self-regulation set out in Chapter 4.

In support of the student interest, assurances concerning the quality and fairness of educational provision achieved through co- and self-regulation will need to be supplemented by the work of the Office of the Independent Adjudicator (OIA). The value of the existing OIA derives from its independence both from institutions and other regulatory bodies, and this should be rigorously preserved. Equally, the precisely defined remit of the OIA should not be extended.
4. Quality assurance in higher education

➢ The current review of quality assessment should be underpinned by the core principles set out below.

We welcome the announcement by HEFCE of a review of quality assessment arrangements, given the significant changes that have taken place in the sector over the last five years and the challenges this brings with it. As HEFCE takes forward its review of the arrangements for assessing quality in higher education institutions we propose the system:

i. be premised on co-regulation and co-ownership

ii. be responsive to the new environment, particularly the needs of students, and adopt an approach that is risk based and equitable between different providers

iii. represent value for money for its funders and keep regulatory burden to a minimum

iv. continue to form part of a UK-wide system

v. have a clear focus on academic quality assurance rather than other aspects of the full student experience

vi. have effective and appropriate governance and transparency for students and other relevant stakeholders

vii. ensure quality assurance expectations at a European level can continue to be met and the significance of transnational education recognised

5. Student protection

➢ We recommend that a number of measures are taken to strengthen student protection in the event of an institution failing, academically or financially, or otherwise ceasing educational provision in whole or in part. A risk based and co-regulatory approach should be taken and the focus for these measures should be on ensuring continuity of provision for affected students.

All of the discussions with stakeholders as part of this work have raised the issue of requirements that should be put in place in the event of an institution failing, academically or financially, or otherwise ceasing educational provision in whole or in part. The main focus has been on how the student would be financially protected and continuity of provision to individuals ensured, but we recognise that there are also issues of continuing to meet the expectations of government, employers or society more broadly. It is extremely important

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that the higher education system is able to adapt to accommodate these concerns. As noted earlier in this report, the group is not convinced, however, by proposals for a universal insurance scheme for all higher education providers. At best this is only a partial solution; it has the potential to be expensive and unworkable across a diverse system, and it does not ensure that all issues of student protection are considered, notably ensuring continuity of study. Recognising the investment that students make in their own education, ensuring appropriate continuity of study in these circumstances should be a priority.

The streamlining and strengthening of entry requirements through the proposed register, and the associated building of resilience into the system through monitoring and trigger points for specific action, will provide a significant level of reassurance in itself. The risk to students is not of course thereby eliminated and we believe that CHEE’s role should evolve to become more explicit in this area, in parallel with institutions having in place appropriate and effective plans for managing such an eventuality. CHEE’s role would have three elements to it:

1. Acting as a ‘student and public interest receiver’
2. Acting as a facilitator for ensuring continuity of provision at another provider should that be deemed appropriate
3. Working with institutions to develop plans for how the student and wider public interest will be managed in the event of course or institutional closure (these were termed ‘living wills’ in the evidence given to the group)

As a student and public interest receiver, CHEE would have a responsibility to protect the student and public interest in the event of an institutional closure. The mechanism for doing this would need to be based on appropriate dialogue and escalation of interventions with the institution concerned and only activated when all other options have been exhausted. There may be a range of options available to perform this function, but the main objective would be to protect the confidence in qualifications previously obtained from that institution and any current public interest assets such as degree awarding powers or university title.

In its facilitator role CHEE would provide support for ensuring continuity for affected students in the event of an institutional or course closure, where this requires the student to move institutions. A requirement for being on the register would be that institutions must enter into dialogue with CHEE if approached about taking on students in these circumstances, although there should be no specific requirements for institutions if they are unable to do so, or if academic entry requirements are not met.

The register should also have a requirement in it for institutions to have in place their own plans for how the student and wider public interest will be managed in the event of course or
institutional closure. These will be assessed by CHEE in a light touch way to ensure they are realistic and appropriate to the potential risks facing the institution concerned, supporting a co-regulatory approach. If as part of these plans institutions deem it necessary to establish student protection schemes, individually or collectively, to provide sufficient levels of reassurance then they would be free to do so. This may be required where the options for ensuring continuity are limited. Adoption of insurance schemes should not, however, be mandatory for all institutions.

This suite of proposals would be an evolution and formalisation of a role that HEFCE has played in the past and should build on the co-regulatory approach to date, founded on close institutional dialogue, institutional support and appropriate escalation of interventions.

6. New legislation

- **New legislation will be needed to implement a number of the recommendations in this report, notably the new role for HEFCE and the proposed register.**

In proposing changes to primary legislation it is important to stress that a new higher education bill is not the goal *per se*, and poorly considered provisions, however well intentioned, may be damaging. It is essential that fundamental protections enshrined in the current higher education legislation are retained, notably those that maintain academic freedom and institutional autonomy through an arms-length relationship with government.
Annexe A: Task and finish group membership and terms of reference

Membership

Professor Robert Allison  Vice-Chancellor, Loughborough University
Mr Nigel Carrington  Vice-Chancellor, University of the Arts London
Professor Simon Gaskell  President and Principal, Queen Mary University of London  (Chair)
Professor Geoff Layer  Vice-Chancellor, University of Wolverhampton
Mr Stephen Marston  Vice-Chancellor, University of Gloucestershire
Professor April McMahon  Vice-Chancellor, Aberystwyth University
Professor Susan Price  Vice-Chancellor, Leeds Metropolitan University

The work of the group was supported by Chris Hale, Assistant Director of Policy, Universities UK.

Terms of reference

A fit-for-purpose and effective regulatory environment is of prime importance to the quality, reputation and success of the higher education sector. The environment emerging from a shift in the primary source of funding for undergraduate teaching, and the changing landscape of providers in the higher education system, are putting increasing pressures on the current regulatory system. Within this context, this task and finish group will consider how the regulation of higher education needs to develop so as to provide effective and appropriate reassurances to students, and accountability to the government and public more widely, while ensuring appropriate levels of autonomy and self-governance.

Specifically the group will:

- identify the principal regulatory drivers and requirements for higher education over the next 10 years
- evaluate the current system to identify gaps, redundancies or areas where it is no longer fit for purpose
- develop proposals for how the higher education regulatory environment needs to be reformed, identifying where specific policy or legislative changes are required

Although research and scholarship are integral parts of the higher education system, regulation in these areas is not within the scope of this work except for where the group deems this to be directly relevant. It is, however, recognised that many of the issues relating to the regulation of undergraduate teaching will extend to postgraduate taught provision and the group will examine this area as appropriate. Furthermore, the focus will primarily be on
the changes seen in England, but this work must have due regard for the development of higher education regulation across the UK and provide a UK-wide perspective on devolved regulatory reform.

The task and finish group will conduct its business over 2014 and report to the Universities UK board in September 2014 with proposals that can underpin Universities UK’s work to inform government policy and legislation in this area.

**Process and engagement**

During the process of this work, it will be important to engage with students, regulators, institutions from across the sector including alternative providers, and experts in the field. Where possible the group should also draw on lessons for regulation from other sectors and higher education systems in other countries, and link closely with the Higher Education Better Regulation Group.
Annexe B: Contributors and consultation

The work of the task group was informed by extensive dialogue with a number of individuals and organisations whose input has been invaluable.

Rob Behrens   Chief Executive, Office of the Independent Adjudicator
Andrew Boggs   Head of Policy, Russell Group [and formerly as Policy Adviser for the Higher Education Better Regulation Group]
Alex Bols   Deputy Chief Executive, GuildHE
Chris Brodie   Chair, Student Loans Company
Professor Peter Coaldrake   Vice-Chancellor, Queensland University of Technology
Louisa Darrien   Policy Adviser, Which?
Executive Group   Association of Heads of University of Administration
Helen Fleming   Competition and Markets Authority
Heather Fry   Director (Regulation and Assurance), HEFCE
Nick Hillman   Director, Higher Education Policy Institute
Griff Jones   Senior Strategy Adviser, Department for Business, Innovation & Skills
Roger King   University of Bath and Higher Education Commission
Anthony McClaran   Chief Executive, Quality Assurance Agency
Gordon McKenzie   Deputy Director, Department for Business, Innovation & Skills
David Palfreyman   Oxford Centre for Higher Education Policy Studies
John Rushforth   Committee of University Chairs
Liz Shutt   Head of Policy, University Alliance
Carmen Suarez   Competition and Markets Authority
Rachel Wenstone   Vice-President, Higher Education, NUS

The work of the group was also the theme of an open symposium hosted by the Higher Education Better Regulation Group in March 2014.

Universities UK members were consulted on emerging findings during workshops held at the 2014 Universities UK Members’ Annual Conference. The work has also been informed by a number of discussions with a wide range of higher education institutions and providers.
Universities UK (UUK) is the representative organisation for the UK’s universities. Founded in 1918, its mission is to be the definitive voice for all universities in the UK, providing high quality leadership and support to its members to promote a successful and diverse higher education sector. With 133 members and offices in London, Cardiff and Edinburgh, it promotes the strength and success of UK universities nationally and internationally.

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