Regulation: History and Context

Higher education institutions are accountable to Parliament and the public for the public funds that they use. The regulatory framework operated by Hefce and the other funding bodies sets down what institutions are expected to do to discharge their accountability obligations. Institutions have to demonstrate that they use public funds for the purpose intended and with propriety; that value for money is achieved; that they are sustainable organisations and that quality standards are met.

There was a significant growth in regulation in the 1980s when the government set about privatising a number of the nationalised industries. Given their monopoly position these utility companies had to be regulated to protect consumers, so powerful utility regulators were established. While traditional regulators had been largely administrative, deriving their authority from parliamentary decisions, these new regulators were to have wider and different powers. As Dame Patricia Hodgson, the first chair of the Higher Education Regulation Review Group, puts it: ‘a new kind of regulator was born, exercising economic and standards judgements across whole sectors, with powers that had previously been in the hands of government alone’. These were super regulators.

Higher education institutions are now subject to a range of regulatory requirements and conditions, reflecting the scope and diversity of their activities. Many of these requirements are general regulations, which apply to many types of organisations, e.g. those relating to health and safety, planning or equal opportunities; others are specifically related to their roles as providers of higher education.

The ‘Better accountability for higher education’ report from PA Consulting following a study commissioned by Hefce in 2000, in response to growing concerns in higher education about the growth in the accountability burden, confirmed the perceptions of institutions that there had been significant increases in accountability demands. It found that some stakeholders felt that the current arrangements still did not deliver appropriate levels of assurance and confidence and also found that shortcomings in communications between stakeholders and institutions, and between stakeholders had led to duplications and misunderstandings.


Main Forms of Regulation

The Better Regulation Task Force (BRTF) articulated 5 Principles of Good Regulation - proportionality, accountability, consistency, transparency and targeting. These have formed the basis of recent work relating to regulation on higher education. In 2004 the Higher Education Regulation Review Group (HERRG) estimated that the cost of policy-making and regulatory bodies in higher education in the UK was about £64m. The cost of these bodies to the sector, through data returns, inspection and administration, was estimated by PA Consulting to be £210m though many felt that the cost was much higher. The main forms of regulation of higher education institutions are in relation to:

- Governance matters, through the Hefce Financial Memorandum with the relevant funding council, and the Privy Council’s role in approving changes to statutes or other governing instruments.
- Financial matters, principally through the Financial Memorandum with the relevant funding council and the Accounts Direction.
- Audit matters, through the Audit Code of Practice of the relevant funding council, data audits and institutional audit reviews, as well as potentially through inspection by the National Audit Office and the Comptroller and Auditor General.
- Charity matters, where in England arrangements have changed with Hefce designated as the principal regulator.
- Academic matters, through the QAA, the research councils and other bodies. The Office for Fair Access (OFFA) is the body set up to safeguard and promote fair access.
Universities and colleges also have ‘public duties’ where they are designated as public authorities, in areas such as freedom of information, the promotion of equality and procurement. One of the issues which gave rise to sectoral concerns about regulation was the volume and nature of requests for data, made by various stakeholder and funding bodies. In some cases such requests were not well coordinated or timed.

Reforming Regulation

Hefce commissioned 3 reports from PA Consulting since 2000 to investigate and monitor the regulatory regime on higher education in England. The most recent report ‘Positive Accountability: Review of the costs, benefits and burdens of accountability in English higher education’ found that the costs to institutions of the accountability and regulation system continued to fall between 2004 and 2008 by some 21%. In part these improvements have derived from new accountability arrangements introduced in full from August 2008, following a series of pilots. As a result of this development, the regulatory relationship between Hefce and the institutions that it funds has 3 main elements:

- The annual provision of information and assurances by institutions each December (the ‘single conversation’)
- A five yearly assurance review undertaken by Hefce officers, normally involving a one day visit to the institution
- A data audit programme, also involving a five yearly audit at each institution

The Higher Education Regulation Review Group (HERRG)

Following the report in 2003 of the Better Regulation Review Group, HERRG was set up in 2004, to advise the Government on the better regulation of higher education in England and to promote the better regulation of the sector more generally. HERRG was chaired initially by Dame Patricia Hodgson, and then by Steve Bundred. It was wound up in 2008, and its work is now being developed by the Higher Education Better Regulation Group (HEBRG). One of the main instruments developed by HERRG for the better regulation of higher education has been the Higher Education Concordat on quality assurance arrangements and data collection. The Concordat adopts a wide definition of ‘regulation’ including data collection and quality assurance as well as the more traditional forms of regulation, and uses the 5 Principles of Good Regulation (proportionality, consistency, transparency, targeting and accountability) as part of its approach to its work.

The Higher Education Better Regulation Group (HEBRG)

HEBRG was established in 2010, as the successor to the Higher Education Regulation Review Group (HERRG). HEBRG is committed to positive regulation and its Chair is Sir Graeme Catto. HEBRG promotes improving regulation in order to improve the student experience and strengthen the UK higher education sector. HEBRG published the ‘Principles for Better Regulation of Higher Education in the UK’ (2011), which builds on the Higher Education Concordat aims to reduce regulatory burden and enhance efficiency by supporting a commitment to co-regulation and has reported following a review (arising from the White Paper) on the non-regulatory landscape and its impact on institutions.

The Regulatory Partnership Group (RPG)

RPG was set up in September 2011 by the Hefce and the Student Loans Company to advise on and oversee the transition to the new regulatory and funding systems for higher education in England. It is not clear what the implications will be of the reported delay in introducing the legislation to put the new arrangements into effect. The membership of the RPG is drawn from Hefce, Student Loans Company, Higher Education Statistics Agency (HESA), Office of the Independent Adjudicator (OIA), Office for Fair Access (OFFA) and the Quality Assurance Agency (QAA). The Group’s work is in four areas:

- Developing an operating framework to set out the roles and responsibilities of the English HE regulatory bodies
• Developing the successor to the Hefce Financial Memorandum;
• Reviewing data and information requirements
• Investigating constitutions and corporate forms

Find more information and resources on this topic on our website at: www.lfhe.ac.uk/en/governance/regulatory-framework/statutory