

5. Regulation and compliance

Introduction and aim

Higher education providers operate in a complex and increasingly regulated environment. One of the duties of a Governing Body is to assure itself that the provider is fully compliant with the statutory and other regulatory requirements placed upon it. This is a significant task, demanding considerable time and attention from the Governing Body and its committees.

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1. The regulatory environment

Higher education providers operate in a complex and dynamic regulatory environment. Multiple demands are placed on providers in respect of the regulatory conditions they are required to meet. These requirements are overseen by a number of different agencies.

2. The regulatory regime

The term regulatory regime describes the:

- Bodies that implement the regulatory framework.
- Frameworks used to set expected behaviours and outcomes.
- Systems in place to measure and enforce compliance.

Collectively, the elements above offer a holistic approach to considering the regulatory regime that a higher education provider is expected to adhere to¹.

3. Regulatory regimes in the UK

In the UK the regulatory regimes are separately determined for each of the devolved nations. In Wales² and Scotland³ regulation of higher education is by national funding councils; in Northern Ireland through a government department⁴; and, in England by a regulator, the [Office for Students](#) (OfS). The different institutional arrangements influence the regulatory regimes in each jurisdiction. While the national systems exhibit some commonalities, there are also differences.

4. Light-touch?

The nature of each regulatory regime varies. While seeking to influence providers' behaviours and planned outcomes, regulation also entails the cost borne by the provider of collecting and submitting the evidence or data required to show compliance to the regulatory Body. The aim of having a 'light touch' regulatory regime, i.e. one where requirements placed on the provider are not expected to lead to an excessive administrative or cost burden in terms of collecting and submitting data and evidence, is frequently expressed.



5. Principles- vs rules-based

The distinction can be made between 'principles-' and 'rules-based' regulation. In the former case the provider is able to determine how best to meet the regulatory requirements. Under such a system the regulator does not impose a strict set of rules, but sets out the principles that have to be met. The argument being that a principles-based approach allows different settings to be respected. What matters is that the principles as determined by the regulator are met. In a rules-based system there is likely to be less flexibility, with the provider being required to adhere to specified rules.

6. Risk-based regulation

Under a risk-based approach to regulation the regulator reviews the data submitted by each provider, and on the basis of evidence, assesses the level of risk of the provider failing to meet the regulatory requirements. Where the regulator assesses the level of risk associated with a provider to be low, the provider will be subject to the minimum level of monitoring and periodic assessment. Should the level of risk be assessed to be higher, the provider will be subject to greater scrutiny and monitoring by the regulator.

7. Receipt of public funding

Higher education providers in receipt of public funding will be required to meet specific conditions as laid down by their funding Body/regulator. Governing Bodies should be clear what requirements need to be met and satisfy themselves that the provider is compliant.

8. Codes of governance.

The higher education codes of governance discuss the Governing Body's role in ensuring compliance with the regulatory regime. The [Scottish Code of Good Higher Education Governance](#) states that the Governing Body should 'satisfy itself that the institution is compliant with all relevant legal and regulatory obligations⁵.' The [Higher Education Code of Governance](#) cites the potential risks if a provider fails to comply with the regulatory regime, noting that the manner by which the provider complies also matters: 'the Governing Body protects institutional reputation by being assured that clear regulations, policies and procedures that adhere to legislative and regulatory requirements are in place, ethical in nature, and followed⁶.'

9. Assurance from the executive

The codes of governance make it clear that Governing Bodies need to assure themselves that the provider complies with the regulatory regime under which they operate. The Governing Body will therefore need to seek assurance from the executive that appropriate policies has been developed, the policies have been successfully implemented and that the policy and the method of implementation meet expected ethical standards.

10. Examining compliance

When seeking assurance about compliance across the multiple fields of regulation, committees of the Governing Body, in particular the audit committee will typically be tasked with conducting the review of specific areas or aspects of the provider's activity or data returns to establish whether the requirements of the regulatory framework have been met.

11. Submission to external Bodies

Every provider is required to submit reports or data to a number of different agencies. The total number of reports and data returns that need to be submitted in any one year is significant. To gain an overview of the number and scope of the reports and data returns submitted, a number of providers have developed detailed lists of returns to be made to external agencies, indicating whether the return is subject to external verification and the expected date of submission. The list of the returns is often shared with the audit committee.

12. Audit committee

The audit committee frequently plays an important role in assuring the Governing Body that the provider is complying with key areas of legislation or regulation and is submitting timely and accurate data returns. The audit committee's is assisted in discharging its responsibilities by the work of the internal auditors.

13. Internal audit

The role of the internal auditors is 'to provide independent assurance that an organisation's risk management, governance and internal controls processes are operating effectively⁷.' Internal audit services may be supplied either by an internal unit of the provider, or by using the professional services of an external provider of internal audit (normally a firm of accountants).



14. Internal audit annual programme

Ahead of the academic year the audit committee agrees with the internal auditors an audit plan for the year. The plan identifies the specific areas or activities, relating to the provider's internal controls, risk management, governance and data returns that the internal auditors will examine during the year. For each agreed task, the internal auditors will produce a report setting out the findings from their audits, and extent to which the committee and the Governing Body can have confidence that the provider has appropriate systems and controls in place. If areas of weakness are identified, the internal auditor will make recommendations as to what actions management should take. Management will be expected to state their response to the auditor's recommendations. The internal auditor's reports are reviewed and discussed by the audit committee.

15. Annual internal audit report

At the year-end the internal auditors will produce an annual internal audit report. The report will summarise the individual audits undertaken during that year, and offer an overall conclusion, based on the work undertaken as to the level of confidence the Governing Body can have in the provider's systems and controls.

16. Statutory regulation

Higher education providers are subject to a wide range of statutory regulation. Some regulation applies to all providers, while other legislation applies to a sub-set of providers depending on their constitutional form (eg. providers constituted as companies are subject to company law, and members of the Governing Body are company directors).

Areas of legislation applying broadly across the sector include:

- Accounting standards and requirements.
- Employment law.
- Equality and diversity.
- Health and safety⁸.

17. Higher Education Statistical Agency

The [Higher Education Statistics Agency](#) (HESA) is a charitable company operating under a statutory framework. Funded largely by subscriptions from higher education providers, HESA is the principal receiver of, and repository for, statistical data about the sector. The agency collects data from higher education providers across all jurisdictions of the UK. HESA is the Designated Data Body (DDB) for English institutions.

18. Data returns

Data collected from higher education providers, collated and published by HESA, includes:

- Students, staff and graduates.
- Finances and estates.
- Academic departments and courses.
- Public engagement and commercial enterprises.

A summary of higher education [data and analysis](#) can be viewed on HESA's website.

19. Assuring the data returns

The Governing Body and its committees can expect to receive regular reports on the submission, accuracy and timing of the data submitted by the provider to HESA. The submission of incorrect data carries risks for a higher education provider. If the level of inaccuracy is significant and the data has determined the funding received by the provider, funds may need to be repaid to the funding Body.

20. Research integrity

The [concordat to support research integrity](#) was originally developed by Universities UK with the Research Councils, the then funding Bodies, the Wellcome Trust and a number of government departments. The concordat seeks to provide a comprehensive national framework for good research conduct and its governance. The funding agreement with [UK Research and Innovation](#) contains the requirement that the provider adopts the concordat.

21. Regulation of quality

The Quality Assurance Agency (QAA) role is to safeguard academic standards and quality. QAA is a charity funded by subscription from higher education providers and the different funding Bodies for whom it reviews quality assurance in each of the national jurisdictions. Although the broad thrust of the QAA's work is common across all areas of the UK, there are differences of detail in how the work is conducted in each of the national jurisdictions.

22. Regulation of charities

Most higher education providers are charities or 'exempt' charities. Providers need to meet their charitable objectives, and ensure the assets of the charity are not placed at undue risk.



23.Changes in England

The regulatory requirements placed on English higher education providers are changing. The academic year 2018-19 is a transition year, during which the regulation of higher education providers in England is being transferred from the previous regulatory framework to the new regime detailed in the Higher Education and Research Act, 2017. The new regulatory arrangements will apply in full from 1 August 2019

24.The new regulatory focus in England

The OfS has declared that it will adopt a 'bold student-focused risk-based approach' to regulating the sector, and that its primary aim is to achieve delivery and positive outcomes for students. The Chair of OfS, Sir Michael Barber, has suggested that the intention is to operate a system of 'trust-based' regulation. The approach is based on a high-level of trust that providers will comply with the regulatory framework.

25.Conclusions

Regulation and compliance is an important and necessary aspect of the work of Governing Bodies. Governors need to be assured that the provider complies with its statutory and regulatory requirements, including making timely and accurate data returns. As the statutory requirements and the regulatory framework are rarely static, Governing Bodies need at all times to remain vigilant that the requirements placed on the provider will change.

26.Questions to review

- Q** Are you familiar with the regulatory framework under which the provider operates?
- Q** Do you understand the main features of the regulatory framework?
- Q** Following the work of the internal auditors, how confident can the Governing Body be in the provider's systems and control?
- Q** How does the Governing Body assure itself as to quality and accuracy of the data returns it makes to HESA?
- Q** Has the provider experienced problems with any of the data returns it has submitted to HESA?

End notes and further reading

- ¹ See Department of Business, Energy and Industrial Strategy (2018), [Comparative Analysis of Regulatory Regimes in Global Economies](#), Research Paper 19, November 2018, p.3.
- ² [Higher Education Funding Council for Wales \(HEFCW\)](#)
- ³ [Scottish Funding Council \(SFC\)](#)
- ⁴ [Department for the Economy Northern Ireland \[DfE\(NI\)\]](#)
- ⁵ [Scottish Code of Good Higher Education Governance, Revised, July 2017, p.9.](#)
- ⁶ Committee of University Chairs, [The Higher Education Code of Governance](#), Revised June 2018, p.13.
- ⁷ [What is internal audit?](#), Chartered Institute of Internal Auditors
- ⁸ Further information and advice as to the role of governing bodies in respect of health and safety can be found in [Leading health and safety at work, Universities and Colleges Employer's Association and Universities Safety and Health Association](#), available at: www.ucea.ac.uk/en/empres/hands/publications/
- ⁹ Comment made at Workfest 18. Podcast available at audioboom.com/posts/7080948-michael-barber-live-at-workfest18 Accessed 11 November 2018.

