



Applying Student Number Controls to Alternative Providers with Designated Courses. Response form

Response from GuildHE

Preamble

GuildHE is pleased to respond to this consultation. We note the context within which the consultation is being conducted:

- Changes have taken place to funding and student number controls for HEFCE-funded institutions.
- The BIS White Paper proposed to make HEFCE the 'lead regulator', working in collaboration with other agencies and with oversight of the funding and regulatory landscape for HE. Work on new regulatory arrangements for HEFCE-funded providers has already commenced and is on-going.
- BIS's intention in the HE White Paper was to move towards a 'level playing field' of regulation for all providers.
- There is, however, no immediate intention to introduce primary legislation which would have been a means of extending regulatory controls further across all providers.
- Nevertheless, some options for development of number control policy remain open, such as those proposed in the consultation.

In that context, we make the following points which we feel should inform any development of number controls. GuildHE members wish to see a regulatory system which:

1. ensures the accountability of all HE providers;
2. is as consistent as practically possible across all providers;
3. promotes and protects diversity in provision: supporting and encouraging different types of high quality provider, and different ways for students to access higher education;
4. allows students from all backgrounds to access higher education in the way that best suits them;
5. places the student interest at its heart;
6. ensures the best value for money for the public purse;
7. provides greater flexibility for all providers;
8. allows for growth of successful providers;
9. has more streamlined accountability requirements;
10. is introduced on an appropriate timescale.

Our responses to the consultation questions are underpinned by these principles and discuss detailed aspects. Here we expand briefly on each of the above points:

1 & 2. Consistent accountability for all providers:

- BIS should consider the first two points together. The system of accountability for public funding should be all-embracing. As far as practically possible, access to funding should

entail consistent expectations of regulation and high-quality provision. The overall ambition should therefore be to ensure entry is controlled to all providers whose students draw on Student Loan funding. Achieving this requires that existing and new alternative providers falling into this category would be controlled.

- However, in the absence of legislation, the proposals in this consultation would not introduce a true level playing field. But the overall intention should be to move towards this goal and therefore greater consistency should be sought.
- This will protect the wider reputation of English HE, ensure arrangements can be relied upon to protect the standards of awards, protect the interests of students, and ensure the best use of public money.
- The assumptions which should underlay any future method, as outlined in the consultation, would help achieve consistency with HEFCE-funded providers – i.e. controlling only full-time UK/EU entrant numbers on designated courses through a single institutional control number.

3. Ensuring a diverse system:

- In looking at regulation, Government needs to consider the HE system as a whole – what it delivers, who it benefits (and has the potential to benefit), and what wider value it has. Effective and appropriate regulation should support, underpin and protect these purposes.
- A key strength of the English HE sector lies in the diversity of its current offer. This provides students with a wide range of choice of what, where and how to study, which in turn ensures diversity in the student body and maintains the attractiveness of studying in England.
- Achieving greater regulatory consistency must not stifle diversity of providers or the courses they offer to students. On the contrary, Government should use this consultation as an opportunity to consider ways of promoting innovation in provision and of incentivising institutions to deliver courses that suit the needs of a wide range of students.
- BIS will also need to ensure the system protects and supports institutions which operate existing and effective franchise provision via partner universities.

4. Supporting access to higher education:

- The system should support institutions which wish to pursue widening participation and access priorities, either independently or through existing frameworks (e.g. OFFA or HEFCE) in the case of HEFCE-funded providers.
- Any number control method which restricted student numbers too precisely could reduce flexibility to support widening access objectives.
- Government should continue to look for mechanisms which can support access to higher education, and ways of making these mechanisms available to all types of institution which draw on public funding.

5 & 6. The student interest and the public purse:

- As outlined above, consistent regulation should seek to protect the wider reputation of English HE, ensure arrangements can be relied upon to protect the standards of awards, protect the interests of students, and ensure the best use of public money.
- Given the range of benefits which English HE delivers, it is in both the public and individual students' interests that the regulatory system allows for a wide range of provision, to a wide range of students, studying in different ways in different places.
- Operating two distinct control regimes for HEFCE-funded and alternative providers cannot be in the long-term interest of students or the wider public. This is particularly true given the opportunities a level playing field would create for incentivising all types of institution to align their HE priorities with those of Government.

7 & 8. Greater flexibility for all providers, and opportunities for growth:

- Higher education delivers important social and economic benefits to the UK and Government should aim to expand overall student numbers.
- The consultation should be seen as an opportunity to look at ways of meeting wider Government objectives to progressively relax controls across the system, as well as to create better competitive mechanisms where all types of successful providers are able to grow. It may be appropriate to consider new competitive mechanisms for alternative providers.
- BIS's aims should be progressive number controls which support growth and skills-acquisition in key economic sectors for all institutions. The current controls fail to incentivise employer-engagement, for example, and more could be done to support vocationally-oriented providers.
- It is unclear from the consultation what impact the new controls would have on capped student numbers at HEFCE-funded providers. All institutions would appreciate greater clarity on this – both HEFCE-funded and private providers. Government's intentions here have the potential to affect existing partnerships between these two provider-types.
- Growth opportunities ought to be available to new entrants to the market, as well as for popular and well-run existing institutions.

9. Streamlining accountability:

- In line with White Paper priorities this consultation should also be an opportunity to look at ways to streamline the burden across all institutions.
- BIS should ensure its thinking is joined up with the ongoing work of the Regulatory Partnership Group.

10. Timetable:

- The proposed timetable is very ambitious and institutions will already be making offers to students for entry in September 2013. Providers as well as other bodies have expressed concerns about the timetable.
- In light of this, it may be appropriate to consider adopting a staged approach to implementing reform, covering essential aspects of the process this year and developing other aspects over a longer timescale.
- Developments could then be informed by work currently being carried out development of assurance processes for HEFCE-funded providers.
- Since the consultation proposals will only deliver a degree of greater alignment between different types of providers, BIS should in any case aim to make further progress towards a level playing field alongside other developments in HE regulation. Work should proceed alongside the on-going work of the Regulatory Partnership Group.

Our responses to the specific consultation questions follow below.

Question 1

Name of organisation (or name of person if the response is a personal response and is not submitted on behalf of an organisation)?

What type of organisation is it? (e.g. Alternative Provider, HEI, FEC, Regulatory Body etc.)

GuildHE

Recognised representative body for higher education providers.

Recognised representative body for higher education providers. Our members span a diverse spectrum – universities, university colleges, specialist vocational institutions, and further education colleges with significant proportions of HE. Membership includes public as well as private “not for profit” and “for profit” institutions. All of the new public Universities created in 2012 are members of GuildHE, and several other members are currently applying for University Title or Taught Degree Awarding Powers.

Question 2

Do you have a preference for Method 1 (control based on eligible students) or Method 2 (control based on students accessing funding)? If so, why is this?

Method 1 would achieve greater consistency with regulations for HEFCE-funded providers. It also provides an appropriate level of flexibility for institutions, regulators and students seeking a place at private providers.

It would be appropriate to control entry to all providers whose students draw on Student Loan funding, where public expenditure needs to be closely managed in a tight fiscal climate. Achieving this control requires that existing and new alternative providers falling into this category would be subjected to controls.

We agree with the assumptions which should underlay any future method, as set out in paragraph 2.2.1 of the consultation – i.e. controlling only full-time UK/EU entrant numbers on designated courses through a single institutional control number. This will assure consistency with HEFCE-funded providers.

The system needs to promote and protect a diverse range of high-quality choices for students. There is a high level of institutional variation among alternative providers, and where this promotes greater choice for students it should be encouraged within the number controls. We discuss this in more detail under Question 4 below.

The system should ultimately seek to ensure that all institutions can pursue widening participation and access priorities, either independently or through existing frameworks as in the case of HEFCE-funded providers.

Creating the eligible population

If Method 1 is adopted, it remains unclear how the eligible student population will be estimated from 2012-13 student numbers. More clarity on this would help providers to plan on a short timescale.

Existing numbers at HEFCE-funded institutions

It is unclear from the consultation what impact the new controls would have on capped student numbers at HEFCE-funded providers. Clarity will be needed. Government's intentions here have the potential to affect existing partnerships between HEFCE-funded and private providers.

Further developments

There are limits to how far the proposed approach can take us. In our Preamble we noted the context within which the present consultation is being conducted, and that the proposals in this consultation will not achieve a true level playing field as intended in the BIS White Paper on HE.

The overall intention should, however, be to move towards a system of regulation which embraces *all* providers whose students access SLC loans, and which allows for consistent expectations of regulation and high-quality provision across all providers. On their own, the proposals in this consultation will not deliver an entirely consistent system, but adopting Method 1 would move in that direction.

In the longer term, further convergence should be sought. Operating two distinct control regimes for HEFCE-funded and alternative providers adds complexity and inefficiency and cannot be in the long-term interest of students, institutions, or the wider public. A more level playing field would create further opportunities for convergence between the priorities of a wide range of autonomous providers and those of Government.

Our Preamble sets out an approach for achieving further progress alongside the wider work on funding and regulation including the work of the Regulatory Partnership Group.

As part of this, we expect BIS wish to continue making progress to allow popular providers to grow, and our response provide a series of considerations about further de-regulation of student numbers. The aim should be to increase flexibility for all providers while supporting wider policy objectives. We provide more detailed comments on this under Question 4 below.

Government should continue to look for mechanisms which can support widening access to higher education, and ways of making these mechanisms available to all types of institution which draw on public funding. We also discuss this in more detail under Question 4.

Proposed timetable and links to wider reforms

The proposed timetable is very ambitious and institutions will already be making offers to students for entry in September 2013. Providers as well as other bodies have expressed concerns about the timetable.

In light of this, it may be appropriate to consider adopting a staged approach to implementing reform, covering essential aspects of the process this year and developing other aspects over a longer timescale.

Developments could then be informed by work currently being carried out development on regulatory processes for HEFCE-funded providers, in line with our suggestions above.

Question 3

What is your view on submission of data to HESA? Do you think designated courses at alternative providers should participate in the Key Information Set and therefore complete the

National Student Survey and Destination of Leavers in Higher Education survey (if student numbers are large enough to permit this)?

In the interest of students it is reasonable to expect alternative providers with designated courses to submit data to HESA. This would provide students with access to comparable information on courses irrespective of a provider's status as a HEFCE-funded or an alternative provider. Information could benefit both students and institutions. It would also provide information on all courses which the public purse supports. These are reasonable expectations in the student and wider public interest.

We also recognise that submission of HESA data has the potential to support the management of student numbers at alternative providers if an appropriate system is introduced. We would note, however, that other information will be needed in order to manage such a system along the lines proposed in the consultation.

If data submission requirements are introduced, it will be important to consider carefully the time and effort required to establish appropriate relationships and processes.

We also welcome the recognition in paragraph 2.2.9 that submission of data to HESA would allow alternative providers to participate in policies such as the high grades policy. In general it would be useful to have more clarity on how the burdens of additional requirements for APs (such as HESA data submission) might be complemented by opportunities to participate in competitive mechanisms for growth within a system driven by student choice. Access to the high grades policy is one example of where the playing field might be made more level. We discuss this in more detail in answer to Question 4 below.

Question 4

Are there any other methods for controlling student numbers on designated courses at alternative providers that you would recommend instead of Method 1 or Method 2?

We outlined in our answer to Question 1 that we would consider system(s) which deliver consistency with the current method for controlling HEFCE-funded institutions. However, this consultation is also an opportunity to look at ways of meeting wider Government objectives to progressively relax controls across the system, as well as creating a more competitive landscape in which successful and high quality providers can grow.

This should be considered now, and certain things could be done as part of BIS's response to the present consultation. But it is also a longer-term policy goal, which will involve HEFCE involvement in the operating of competitive control mechanisms. Therefore it will also need consideration in that wider context.

We therefore suggest that consideration of a system (or systems) for competitive number control mechanisms, reflecting the full range of institutional and student types which access student loan funding, should be taken forward as part of wider regulatory and funding policy development. This would allow BIS and HEFCE to consider how they want providers to participate in the HE system in exchange for access to loan funding, and if necessary to make further changes to policy as part of the ongoing process of reform. It would not prevent some action being taken now if that is considered appropriate following this consultation.

Considerations will need to include the following:

An all-embracing system:

- All successful providers should have opportunities to expand their designated numbers, regardless of their status. The playing field can be levelled in both directions, and BIS will need to consider both allowing alternative providers access to existing competitive controls, and allowing all providers access to new types of competition.

Existing competitive controls:

- Mechanisms currently exist for HEFCE-funded providers in ABB+ and core/margin. We welcome the recognition in paragraph 2.2.9 that submission of data to HESA would allow alternative providers to participate in policies such as the high grades policy. Nothing is said, however, about core/margin, and clarity would be welcomed.

New competitive controls:

- New number control mechanisms may be necessary to incentivise growth in priority areas, and encourage innovation in the provider sector. Systems should support expansion and skills-acquisition in key economic sectors for all institutions. The current controls fail to incentivise employer-engagement, for example, and more could be done to support vocationally-oriented institutions (which include many private providers). Growth opportunities could be aligned with wider economic and social objectives, such as the industrial strategy.

New entrants

- Growth opportunities ought to be available to new entrants to the market, as well as for popular and well-run existing institutions, provided new entrants are properly designated.

Credit-based funding

- Credit-based funding presents challenges within the current system, but it may be useful to consider this in the longer term – particularly if the platforms used by the Student Loans Company become more flexible and up-to-date.

Non-designated courses

- The consultation makes clear that non-designated courses can continue to be delivered at alternative providers. The same option is not currently available to HEFCE-funded providers for Home/EU students. If a methodology is adopted which counts eligible students, Government/regulators should explore the possibilities for non-designated programmes at all institutions accessing SLC-loans. This would help in creating a more level playing field and provide more flexibility on student numbers.
- The condition for offering non-designated options should be that they are in the individual student's interest. This individual student interest (as the purchaser of learning) is already the primary driver of business at private institutions, but the same condition could also apply at HEFCE-funded providers. A link should also be made to the concept of the wider student interest, and some definition would be required as to what options would be permissible.
- The key principles are that access to non-designated numbers should *diversify and enhance student choice*, allow all popular providers to grow, reduce Treasury expenditure and *open up additional income and investment* outside the Treasury's commitment. It is

possible to create a system which supports wider policy objectives such as widening participation, economic growth and meets the needs of employers.

- Diversifying student choice should not be centred on creating new options for wealthy students. Options should be *access-focused* and responsive to the fact that loans are not the optimal solution for all students in all situations. The system should aim to help overcome those deterrents to HE participation which are founded on reluctance to take on loan debt, by providing alternatives to state-backed loans to support students who need other methods of funding their studies.
- Competitions which meet this aim and open up additional income and investment could include:
 - Low-cost provision linked to widening access initiatives.
 - Innovation-linked options such as complete employer funding or significant co-funding. It is possible to envisage options where costs are reduced through brokered part-time work and or paid sandwich years, through partnering with employers, LEPs or through city authorities.
 - 2+1 options with an FE partner (where the first two years are potentially cheaper through study at home / PT options).
 - Credit-based pay-up-front or pay-as-you-go models.
- To aid students' choices, this would require an effective system of information, advice and guidance. This reinforces the importance of provision of information via KIS, DLHE, etc.
- We recognise that this will be a complex area and progress may take some time. However, the potential benefits for student choice need to be considered in the wider context of how best to promote a competitive and expanding sector.

Protecting existing core numbers

- Since the overall growth such systems might create would most likely be small in size (comparable to existing and previous number control incentives), we would strongly advocate creating these numbers without top-slicing existing core numbers. This would be consistent with the current approach BIS is taking in creating core/margin numbers for 2013-14, so new mechanisms could be situated outside the main controlled population.

Question 5

Do you agree that there should be an exemption from student number controls for alternative providers with small numbers of students accessing student support? If so, do you have suggestions as to how the Department should define 'very small'?

In terms of burden and cost-efficiency, an exemption for alternative providers with very small numbers appears reasonable.

Providers with up to 50 students could be considered for exemption. This would create consistency with current mechanisms for HEFCE-funded institutions: to protect smaller institutions, HEFCE already exempt the first 50 students at each institution when calculating how many students to cut from SNCs under the ABB+ policy (and for core/margin in 2012-13).

We agree however that arrangements for each provider would need to reflect the degree of risk for that institution. BIS will reasonably wish to retain sufficient control over the overall student support budget and to be consistent with risk-based approaches currently in operation.

Question 6

Equality considerations: Do you think that the proposals for applying student number controls will have any equality implications (e.g. positive, negative, or neutral) for people with protected characteristics (as set out in the Equality Act 2010), or people from low income groups?¹ What impacts might there be and do you have any evidence of possible impacts?

As the funding reforms have been rolled out, GuildHE has highlighted a number of concerns relating to Equality and Diversity which arise from the system now in operation for controlling student numbers. These concerns will also apply here if a broadly similar system is implemented for alternative providers as the consultation proposes:

- We welcome the Government's continued interest in access and opportunity in HE for under-represented groups, as set out in the recent grant letter. A student-centred system must ensure that students are able to access whichever institution is the right choice for them.
- Many alternative providers are educators of mature and part-time students. Government is keen to encourage students in these categories.
- The current net impact of the current set of HE reforms appears to be instability for students. If it is possible to reduce instability for vulnerable groups of students, that will be welcomed. Following a drop in demand in 2012-13, we are encouraged by signs of a recovery in demand in 2012. Continued monitoring of participation will be critical in the coming years, as applicant behaviour adjusts to the higher fee regime. Given the comments in our Preamble about aligning controls for alternative providers with wider reviews of regulation and of HEFCE's funding streams, it may be necessary to consider what support can be given to protecting vulnerable areas at alternative providers.
- We have argued throughout our response for more progressive methods of controlling student numbers and encouraging competition among providers. This argument is relevant to Equality & Diversity. Currently, other than for the highest achievers, there is very little freedom from number controls to support student choice. Evidence demonstrates differentials across schools in different localities, in terms of the number of

¹ Section 149(1) of the Equality Act 2010 imposes a duty on Ministers to have due regard to three specified equality matters when exercising their functions. These are: a) eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by the Act; b) advancing equality of opportunity between people who share a relevant protected characteristic and people who do not share it; and c) fostering good relations between people who share a relevant protected characteristic and people who do not share it. The Equality Duty covers the following protected characteristics: age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation. The duty to have due regard to the need to eliminate discrimination also covers marriage and civil partnerships.

learners achieving the highest grades at A-level. Many under-represented students apply to HE with qualifications other than A-level, including mixtures of qualifications – alternative providers are able to consider such applicants without restriction. All these concerns are as relevant to students attending alternative providers as HEFCE-funded providers.

- Our broad position is therefore that, in the interest of student choice for the full diversity of students, any new system of designation and number controls should look to encourage new entrants and innovations which *increase* rather than restrict diversity in the options available to particular types of students. Systems of control need to provide continued momentum in widening access to higher education, regardless of the provider students choose to attend.
- We would also refer back to our points about creating alternative (non-loan / lower-price) ways of supporting students who are more likely to be deterred by the prospect of a large loan debt – see the points raised under Question 4.
- Arguments around Equality & Diversity, and for monitoring developments in this area, reinforce the case for collection and provision of consistent information outlined in our response to Question 2.

Question 7

Do you have any other comments on the proposals within this consultation document?

We have the following additional comments which are relevant to all aspects of the consultation.

Diversity and the delivery of public and private benefit

The private HE sector is not homogeneous and there is a diverse mixed economy of providers which will need to be covered by new any arrangements. Provided the quality of provision is high, this diversity is welcome: it complements the diversity of the HEFCE-funded sector, provides additional choice for students, and can deliver returns to both individuals and to wider society. State 'support' for private HE providers should be based on their capacity to generate public and private benefits and contribute to local, regional and national economies. These features ought to be as relevant to private providers of HE as to public HE institutions, and decisions about designation for student loans should take account of them.

Future regulation should not stifle future opportunities to expand provision which help achieve these goals.

Care will need to be taken to put in place a process which is sufficiently simple, transparent and low-burden, but is able to deal with the large amount of diversity among alternative providers.

Streamlining the accountability burden

In line with White Paper priorities this consultation should also be an opportunity to look at ways to streamline the regulatory burden across all institutions.

BIS should ensure its thinking is joined up with the ongoing work of the Regulatory Partnership

Group.

Franchise provision

There is a general lack of clarity in the consultation about how franchise providers would be affected by new arrangements.

Franchise arrangements create a relatively unique situation where the franchisee is already subject to a number control via their partner HEI. Data on student numbers at franchisee institutions is also provided to HESA. Franchise providers often partner with HEIs to deliver important specialist subjects, for example health-related subjects.

If these institutions were successful in gaining Taught Degree Awarding Powers, and left their franchise relationships, what would the arrangements be for the student numbers currently held by the university? BIS should consider whether in such former franchise providers could bid for their own numbers, or would be assigned them, and how this would be done.

Fee-setting is also an issue which needs to be considered when establishing the new arrangements. Some students are charged the full £9,000 through franchise arrangements. Via the franchise some also attract additional funding through these arrangements, such as for high-cost provision. There are students already in the new funding regime in this situation, who will still be studying in 2013-14. There would be risks involved in changing this arrangement.

Alternative providers who participate in franchise arrangements can also be vulnerable to changes to franchise arrangements, thus having little control over their overall numbers and consequently less ability to plan ahead.

Definitions and language

We feel more precise language will be required in some areas if the proposals are implemented. It will be important to ensure definitions of different providers are appropriate. There may be future instances where new providers cut across the definitions provided in the consultation document – for example, providers with relationships to overseas corporations. We would expect BIS and HEFCE to resolve any ambiguity in due course.

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below:

Please acknowledge this reply

At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

Yes

No

