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Distinction and Diversity  
in Higher Education



Dear Simon,

### **BIS Technical Consultation on “A new, fit-for-purpose regulatory framework for the Higher Education Sector” – response from GuildHE**

GuildHE is responding to the BIS Technical Consultation on “A new, fit-for-purpose regulatory framework for the Higher Education Sector”. Our responses to consultation questions follow below. We also include an Overview of our arguments.

- **Question 1:** Respondent details:
  - Andy Westwood, Chief Executive.
  - Responding on behalf of: GuildHE, recognised representative body for Higher Education Institutions.

#### **OVERVIEW**

GuildHE, one of the two formal representative bodies for higher education, has 34 members across a diverse spectrum, including universities, university colleges, specialist vocational institutions, and further education colleges with significant proportions of HE. Our members also include public, as well as private ‘for profit’ and ‘not for profit’ institutions. GuildHE’s membership is varied in size and institutional character, and covers many perspectives – small and larger, private and public, with varied specialisms and research interests. They include institutions as varied as the Royal Agricultural College, the Universities of Worcester and Winchester, University College Birmingham, the University for the Creative Arts, the Liverpool Institute for Performing Arts, and Bishop Grosseteste University College Lincoln and Norwich University College of the Arts.

The regulatory framework for Higher Education (HE) is of critical importance to the future shape and success of higher education, its institutions, its students and other public and private beneficiaries. The proposals in this consultation, alongside the changes introduced by the HE White Paper, represent a significant change in the regulation of one of the UK’s most successful sectors. English higher education is also a highly successful export, extending across teaching, research, scholarship and innovation for economic and social growth. It is crucial that changes to the way this is regulated, the conditions for entry and the relationships between providers, students and the state preserve those strengths. While we welcome the broad direction of travel, in places the consultation proposals require further thought, as stated in our responses to the specific questions.



We welcome Government's emphasis on the need for an independent regulator, and welcome HEFCE taking the lead alongside its partner agencies. An effective system for ensuring the delivery of public benefit and preserving the quality and reputation of higher education in England must be built on balanced and mutually-reinforcing co-regulation between regulatory partners. In places we think these relationships require further thought.

We also strongly support the central principles of institutional autonomy and diversity, and the need to uphold and protect the interest of students, to reduce burden and to be proportionate to risk. We expect HEFCE as lead regulator to support and uphold these principles.

Effective co-regulation requires a positive relationship between regulators and institutions, and a clear definition of the expectations students can have in the new system, both collectively and individually. These relationships require further clarification and definition, in consultation with the sector and students. GuildHE institutions place trust in HEFCE and other regulatory bodies and are keen to continue to work constructively with them.

These reforms must ensure that the student interest is protected, but there needs to be more explanation around what defines the student interest. Students are very different from one another, with different needs and interests in the system, so it will also be important to have regard to the range of individual student interests as well as the notion of a 'collective' interest.

We support the new role for HEFCE in championing the interests of students. But more consideration needs to be paid to the fact that students do not just attend university but enter into a long-term 'deal' with institutions, regulators and Government funders. More emphasis must be given to access to HE and to graduates – recognising that for the student, the HE deal is a much longer term. A number of the regulatory bodies have a clear interest in, and relationship to, the student before and after their period of study.

We welcome the idea of a single gateway for entry into the HE sector. We feel it should build strongly on the effective existing mechanisms for preserving and enhancing quality and accountability. GuildHE strongly believes the only barriers to entry to the HE sector should be based around quality, sustainability, the nature of the HE endeavour at both taught and research level, and the delivery of public benefit and enhancement of the lives of graduates.

We support the intention to create a level playing field for all providers designated for student support, based around quality, fair access, provision of information and financial sustainability. However, to protect all students, Government needs to give more consideration to providers that might fall outside of, or opt to remain outside of, the new regulatory framework.

We welcome the introduction of a risk-based approach, and feel it will be crucial to reflect on what the categories of risk will be in the new system with greater diversity of providers and with more emphasis on the student. The strengths of the existing quality assurance mechanisms should be retained where appropriate.



We warmly welcome the proposed changes to the criteria for applying for University Title. The existing threshold for the numbers criterion is arbitrary and bears no significance to an institution's ability to deliver a high-quality student experience and teaching informed by scholarship and research; it has posed an unfair disadvantage to many long-established smaller HE institutions. The proposals will remove stigma and confusion to students and employers, and support the creation of new specialist universities in areas of key economic importance, and could enhance the international attractiveness and diversity of the HE sector.

In the context of a risk-based approach, and given the emphasis on a level playing-field, and provided the changes are aligned with new arrangements for institutional review, we feel the proposals on renewable Degree Awarding Powers are broadly appropriate.

The current criteria for receipt of Degree Awarding Powers have rightly ensured a single, rigorous framework is in place to guarantee that high academic standards and a cohesive and self-critical academic community are at the core of degree-awarding organisations. We believe this is still the right approach, and the challenge for providers seeking these powers is to show how they meet these criteria. A two-tier approach, which allowed for different threshold requirements between different types of provider, could severely damage the high value and reputation of UKHE and existing degree-awarding organisations. We would also expect any body or organisation seeking powers relating to the award of UK degrees to be able to show experience and understanding of the norms and expectations that underpin UK higher education.

There are dangers in linking track record to the length of degree programmes on offer when considering eligibility to apply for Degree Awarding Powers. We would not wish to see the situation arising whereby offering shorter degree courses afforded a faster route.

A single gateway for entry into the higher education sector is an important step in levelling the playing field for institutions that make up the diversity of the English sector. We think it important for the sake of prospective and actual students and for the international reputation of HE in this country that there should not be two separate routes to university title, one through the Privy Council and one where the right to use the title of university as part of a business or trading name is achieved through Companies House. We support the role HEFCE could continue to play and expect them to want to call on QAA, but we feel that the route through the Privy Council and HEFCE as set out in the consultation should be recognised as the sole route to university title, rather than allowing for a separate route through Companies House as may be implied in figure 5 of the Technical Consultation.

We note that research and other funding lies outside the scope of the present consultation, and that it is intended that the requirements of eligibility and accountability for research and innovation funding remain unchanged. However, GuildHE institutions are concerned about the changes to research funding priorities, and in the broader picture research and innovation are an essential part of the value and nature of higher education.

There may be tensions between some of the proposals for English regulation and the UK-wide regulatory aspects. We think more thought needs to be given to the practicalities of HEFCE, as an English agency, acting on behalf of BIS in maintaining lists of Recognised and Listed bodies.



The timescale and extent of change also requires careful thought. The proposed changes will be introduced against a backdrop of large-scale changes to HE funding, and inevitable uncertainty for the HE sector. HE providers will need to be able to plan for the impact of change with as much certainty as possible, and make necessary adjustments. The burden on the new regulatory partners – and particularly HEFCE as lead regulator – will also be significant. It may be appropriate to phase changes and link priorities to quick wins, where existing arrangements facilitate this.

For example, we understand that changes to the numbers requirements for University Title do not require legislation, and could be brought forward swiftly and efficiently. This would be particularly helpful for existing University Colleges in regularising their situation during the coming period of general uncertainty in the sector.

## RESPONSES TO SPECIFIC CONSULTATION QUESTIONS

### Chapter 1: The introduction of an independent lead regulator

- **Question 2:** *We have set out our proposals on what responsibilities HEFCE should have in its role as the lead regulator. In implementing these functions, are there any processes that could be improved, reduced or removed while still protecting the student interest and public funds?*

The powers proposed for HEFCE to be able to suspend or remove a provider's designation for student support or for HEFCE teaching grant would need to be coupled with clear arrangements to protect student interests in the event of any problems arising.

It will be important to ensure that bureaucracy is kept to a minimum, and that requirements for data and information reflect the need to minimise burdens and maximise efficiency for institutions.

It will also be important to avoid duplication between the regulatory bodies, as this would add unnecessary burden and complication.

- **Question 3:** *Do we need to consider anything additional to the proposals set out to enable HEFCE's role as a student champion in terms of protecting the collective student interest?*

Championing the student interest includes, but is not limited to, student choice. There is possibly a role for HEFCE to play in controlling market volatility. It is not clear whether HEFCE's new explicit role to protect the interests of students will include ensuring potential or 'would be' students have access to high-quality regional opportunities for higher education, including HE delivered within a reasonable travelling distance of where they live through actual rather than virtual delivery.

Existing arrangements offered through the Office of the Independent Adjudicator (for individual complaints), through the QAA Causes for Concern procedures (for more generic issues), through OFFA in respect of access arrangements and through OFT procedures in respect of anti-competitive behaviour or abuse of market position are designed to protect

the interests of students at, or in some cases applicants to, existing higher education institutions.

We welcome the proposals to extend this protection to those studying at other higher education providers where the latter seek designation for access to student support. However, giving HEFCE additional powers to protect the collective interests of students, while ignoring the interests of those who lack any ready access to higher education provision, would seem inappropriate. This will become all the more important if, under future arrangements there is an increasing trend towards students wishing to remain home based rather than moving away to university or college.

- **Question 4:** *With regard to HEFCE's role as a student champion, which of the two options is preferred around awarding compensation for collective interest cases – Option 1 where HEFCE would have this ability, or Option 2 where HEFCE would have to refer such cases to the OIA for its decision?*

Given the existing expertise and position of the OIA, it would seem preferable to provide that the OIA should retain the lead role in dealing with issues where the question of compensation for students – either individually or collectively – might arise.

- **Question 5:** *Should this remain as an ability to recommend compensation awards, as now with OIA (Option 1) or should we introduce new provisions which will require the governing body to pay compensation (Option 2)?*

Given the range of HE providers envisaged, we are not clear that it would be practicable to require – as opposed to recommend – the payment of compensation in all cases. We therefore prefer that the ability to recommend compensation remains as it is now with OIA.

## **Chapter 2: A single regulatory framework for provider designation for student support and HEFCE teaching grant**

- **Question 6:** *This document sets out the regulatory framework for designation for student support and HEFCE teaching grant – are there any processes within this framework that could be improved or reduced to make it more risk-based and ensure proportionate requirements and a level playing field while still protecting the student interest and public funds?*

We welcome the clarity around the proposal for the establishment of registers of providers under the 3 broad categories of the new regulatory framework, namely:

- bodies holding DAP
- providers designated for student support
- providers in receipt of teaching grant.

As noted above we also welcome the intention to create a 'level playing field' for all providers designated in a particular category for student support funding in the areas of quality, dispute resolution, provision of information, fair access, financial sustainability and fees. However, it is not clear what the position might be in respect of providers which chose not to apply for designation for student funding. Those with degree awarding



powers would presumably still be required to subscribe to the QAA and meet relevant requirements and expectations accordingly. However, for HE providers that chose not to apply for designation and which did not hold degree awarding powers, the line of regulation would presumably be rather more attenuated through the relevant awarding body. While it is difficult to predict the impact of the new regime for higher education, it seems entirely possible that there may be growth in areas outside the regulatory framework. We would welcome further discussion of how the interests of students might best be protected in these circumstances.

We note that a further consultation is planned on what might be entailed in a more risk based approach to quality assurance and look forward to contributing to that in due course.

We think it will be important however to look more closely at definitions and triggers of risk and not to make assumptions about what may constitute risk. We would also not want to see an emphasis on regulation so as to address risk leading to loss of scope for exploring good practice and the scope for enhancement of quality associated with review.

- **Question 7:** *While it is not Government's role to underwrite independent providers that have become unviable, how can we best protect the interests of students in the event a provider fails in some way or becomes insolvent?*

The issues raised by this question relate to those raised in our response to Q 6 above. In the public and students' interest it remains far preferable to ensure risks are minimised so that institutions are less likely to find themselves in this position. Given the changing circumstances, it would be helpful to explore how far it might be possible for institutions to enter into formal agreements on, for example, a regional basis for the protection of students. The same issues occur rather more acutely in the case of bona fide international students who find that their HE provider loses its right to sponsor students under the UKBA points based system for student visas – and again the issues here need to be explored.

- **Question 8:** *We welcome views on how flexible provision such as two year courses could be encouraged.*

In respect of two year degree programmes, we recognise the potential benefits to those students who can study full time over the period but note the findings from earlier research which show the costs of delivery as being rather higher per year than the costs of equivalent 3 year programmes. We would have concerns lest quality and standards be driven down in order to drive down costs over a two year period. Providers will not be encouraged to offer flexible provision unless the maximum tuition charge is lifted for this specific provision.

A balance between student demand and student interests needs to be carefully considered.

English higher education enjoys an excellent international reputation and there are some concerns lest a widespread move towards two-year degrees put this reputation at risk.



It will be important also to take into account the need to safeguard arrangements for the mutual recognition of qualifications both within and beyond the European Higher Education Area under the Bologna Process. In this respect, there are some risks associated with a two year degree which make it important to allow for discussions with the European Commission and through the Bologna Process so as to ensure the interests of students are protected.

It is also important to note that in some cases and subjects, two-year intensive degrees would not afford an appropriate length of time for academic reflection, independent learning and development and/or formal placements and work experience, which are central to the purpose of study.

We would prefer to see more emphasis on greater scope for flexibility in other ways. This would include making it easier for students to switch mode of study or to take breaks from study in accordance with their needs. It would also include providing incentives and removing disincentives for other kinds of innovative provision – examples would include the ‘2+1’ partnered programmes for progression, modular courses combined with employment (especially in relevant specialist sectors), and intensive part time programmes spread out over a longer period where study/contact comes under the 25% intensity threshold for loan eligibility.

### **Chapter 3: The adoption of a single gateway for entry to the higher education sector**

- **Question 9:** *Do you agree that it is important to retain the Privy Council as an independent element in the process for awarding, renewing and removing degree awarding powers and university title?*

Yes – we think it important that the Privy Council should retain its overall responsibility and role in the process. We are content that responsibility for administering the processes involved and for advising Ministers should rest with HEFCE rather than BIS assuming that HEFCE would wish to call on the QAA for advice and support as happens at present. We anticipate that HEFCE will wish to liaise with other parts of the UK as appropriate. The key factor is to ensure that the rigour of the processes involved is not in any way diluted and that the standard and quality of provision is maintained. The involvement of the Privy Council in the process is recognised by overseas governments and potential partner bodies as an important ‘marker’ of the status of higher education providers – we would not wish to lose the stamp of authority that recognition by the Privy Council confers.

We also think it important for the sake of prospective and actual students and for the international reputation of higher education in this country that there should not be two separate routes to university title, one through the Privy Council and one where the right to use the title of university as part of a business or trading name is achieved through Companies House. We would hope that the Privy Council and HEFCE route could be recognised as the sole route to university title – we do not consider that this route needs changing from the current arrangements but we do not wish to see any organisations able to bypass this if they are applying to Companies House (as is apparently the case in Figure 5 of the Technical Consultation).



- **Question 10:** *We have set out the action that we are going to take to establish HEFCE as the single gateway for entry to the HE sector and to clarify and streamline processes for designating HE providers for student support purposes and for HEFCE funding, for administering the application processes for both degree awarding powers and university title and for compiling, maintaining and publishing the Recognised and Listed Bodies and Recognised Awards Lists. Are there any other processes we should consider in this context?*

We recognise the intention to establish HEFCE as the single gateway for entry to the HE sector in England. However as noted above, we would wish to see further consideration of the position of HE providers who do not wish to be designated for the purposes of access to student support.

We would welcome greater clarity around the Recognised and Listed Bodies and Recognised Awards Lists. These can be potentially very confusing both for overseas students and government bodies. Given that these lists currently represent the position across the UK, we assume further discussion would be needed with the devolved administrations before substantive changes could be made.

#### **Chapter 4: Reforms to Degree Awarding Powers (DAPs) and University Title (UT) criteria**

- **Question 11:** *Are there any requirements as set out within the TDAPs current criteria (see Annex), including evidence requirements, which would preclude non-teaching bodies from being eligible to apply for taught degree awarding powers?*

We believe there are problems with this proposal. The existing criteria for degree awarding powers (which are common to all bodies in England and Wales) require that 'an organisation must be able to show the effectiveness of its present regulatory and quality assurance arrangements and its capacity to meet the expectations on academic standards and quality management as set out in the national Academic Infrastructure'. It is further noted that 'The criteria are designed to establish that the applicant organisation has a well found, cohesive and self-critical academic community that demonstrates firm guardianship of its standards.' The evidence expectations for bodies seeking degree awarding powers and the procedures involved in establishing whether or not they satisfy the criteria normally rely on a rigorous process of review and assessment carried out over the period of an academic year or more so as to measure the applicant body's performance in practice against the specified criteria.

Our understanding is that under the current criteria, non-teaching bodies would not be eligible to apply for degree awarding powers. If the position were to change so that non-teaching bodies were able to apply, it is difficult to see how they could show how they meet the current criteria – since those criteria assume an evidence base which draws on performance to date.

There are therefore problems with non-teaching bodies applying for Degree Awarding Powers. It may be possible to suggest other approaches, but it will be important to ensure that rigour of the process is maintained, and that the elements of the criteria outlined



above are met, to protect standards and quality requirements. It would be in no-one's interests to have any suggestion of a two tier approach.

Within this process the role of the QAA is important and needs emphasis.

- **Question 12:** *Would it be helpful to specify in the criteria that non-teaching bodies must demonstrate that their delivery partners were competent in the required areas?*

As under the current arrangements, any awarding body working in partnership with other bodies for the delivery of their awards would need to have arrangements in place for the assurance of quality and standards of the provision. If the assumption is that the provisions in the existing criteria relating to governance and academic management, academic standards and quality assurance, the scholarship and pedagogical effectiveness of academic staff and the environment supporting the delivery of taught higher education programmes, remain essential elements in any new arrangements, it would be necessary to explore how the various roles and requirements might be shown to be met as between the awarding body and the delivery partner(s) so as to maintain the standards of awards, the quality of provision and the scope for ongoing enhancement of provision.

- **Question 13:** *What evidence requirements should the non-teaching bodies themselves be expected to meet over and above what their delivery partners are able to demonstrate?*

Given that ultimate responsibility for the standards of awards and the quality of provision would rest with the awarding body – whether or not they were directly involved in teaching – the issues would turn on the capability of the body concerned to exercise that responsibility. It is suggested that there is a wider need to revisit the criteria to ensure that they appropriately address the differences between bodies that were seen as being in the public sector and those in the private sector (whether for profit or not for profit) with in some cases very different arrangements for governance and management. The current criteria seem to be predicated on the assumption that a body applying for degree awarding powers is operating on the same basis as a 'traditional' higher education institution. Given the far-reaching changes affecting the whole of the higher education sector it will be important to ensure for the future that there is clarity about the nature of any organisation that is granted degree awarding powers and the arrangements that may apply in the case of any organisational change such as merger or takeover.

- **Question 14:** *We would welcome your views on our proposal to link track record to the length of the degree programmes on offer and whether you see any risks with this approach.*

We are not persuaded that the argument for a four year track record is weaker now than when this requirement was first introduced. We also see risks attached in linking track record to the length of the degree programmes on offer. We would not wish to see the situation arising whereby offering shorter degree courses offered a faster route to eligibility to apply for degree awarding powers. A self critical and reflective approach to the delivery of higher education must include scope for learning from experience and for considering the opportunity for enhancement over an extended period of time.



- **Question 15:** *We would welcome views on how else the track record criterion might be applied more flexibly. For example are there different types of track record or experience you think could be taken into consideration?*

We would expect any body or organisation seeking powers relating to the award of UK degrees to be able to show experience and understanding of the norms and expectations that underpin UK higher education. We note that it is open to overseas providers to offer programmes leading to the award of degrees accredited or recognised elsewhere. In some cases that may be the most appropriate route for them to follow.

- **Question 16:** *Do you consider that alternative models for entry e.g. single subject taught degree awarding powers would give more scope for new providers to enter the system? Would you be interested in the development of a single-subject model?*

We see the proposal for the development of a single subject model for the award of taught degree awarding powers as being potentially a helpful way forward in enabling new providers to enter the system. We support Government's encouragement of innovative provision, but we believe that this proposal requires further thought and definition – for example in relation to the use of single-subject and broader powers for validation.

However, it will be important to define what 'single-subject' refers to as this could be broadly or narrowly drawn. We believe there is great value to both students, employers and researchers in a 'specialist' university with Degree Awarding Powers, but more narrowly defined single subject provision may present problems. There would be difficulties with using JACS codes, since on the one hand these contain considerable and welcome diversity in specific subjects of study, but on the other hand some subjects (e.g. Engineering) extend across a number of JACS codes.

We note also that the relevant assurance processes concern themselves with quality across whole institutions, rather than individual subjects. This is appropriate and reflects the way institutions operate and are governed.

- **Question 17:** *Do you consider a six year period for renewals of degree awarding powers in the first instance is appropriate? If not, what period would you like to see and why?*

On balance we feel that this remains appropriate, representing two full cohorts of students on a three year degree programme. However, this would need to be set in the context of the proposed new arrangements for institutional review and the process of assessment for the renewal of degree awarding powers.

We feel that for institutions that currently hold degree awarding powers, the sanctions for removal of those powers and the safeguards in place are sufficient.

- **Question 18:** *Would you like to see a longer period between subsequent renewals?*

A longer period between subsequent renewal of degree awarding powers would seem reasonable provided it was consistent with planned review processes as above.



- **Question 19:** *What do you consider a reasonable number of renewals before being eligible for consideration for degree awarding powers indefinitely, subject to continuing satisfactory outcomes of periodic quality assurance reviews?*

If the intention is to establish powers for the withdrawal or suspension of degree awarding powers as a last resort in the event of problems arising for the future then it would seem reasonable to allow for the grant of degree awarding powers without fixed time limits after two renewals.

- **Question 20:** *Do you agree with our proposal to reduce the numbers criterion for university title to 1,000 full-time equivalent higher education students of which at least 750 are studying for a degree alongside a requirement that more than 50% FTE of an organisation's overall student body is studying HE? If you do not agree with this proposal could you please explain your reasons and also suggest an alternative proposal and why you think this would be better.*

Yes, we very much welcome this proposal in providing greater clarity for potential students and employers and enabling those institutions currently identified as university colleges to establish their position in the higher education community.

What matters is not an arbitrary criterion relating to numbers but the ability of the institutions concerned to deliver a high-quality higher education experience and teaching informed by scholarship and research, and the delivery of public benefit and enhancement of the lives of graduates. We feel that the existing university colleges have already proved that point.

Given that our understanding is that it would not need legislation, we would hope that it could be implemented as soon as possible so as to allow those institutions which have already been granted taught degree awarding powers on an indefinite basis to apply for university title without further delay.

Early details for a transparent process for making applications under the new arrangements would therefore be welcome.

We note with concern that, since the present consultation was launched, there is growing confusion on university and university college title: 13 University Technical Colleges have been created and Coventry University has set up a 'no frills' subsidiary trading under the name 'Coventry University College'. GuildHE fully supports the development of innovative models of education for higher skills and training, but given the high value and reputational worth of the university and university college title as granted by Privy Council, and the legal protections around the university name, urgent action is needed to minimise confusion and to reduce the period where overlaps may occur.

## **Chapter 5: Simplifying the process for changing corporate status**

- **Question 21:** *Would you welcome legislative change to make the process of changing legal status easier?*

Yes, and we would be interested in exploring what the options might be.



We recognise that this may make it easier if an institution wanted to co-operate closely with an international partner, for example in federation or merger – although we would have concerns about specific rules and powers relating to takeover and purchase (see Q23).

- **Question 22:** *If so, why? It would be helpful to understand how and why this has been problematic in the past and what the benefits would be of making this process easier.*

GuildHE is aware of problems in the past with a lack of written guidance to the process and a lack of model documentation. In addition to considering legislative change, it would be helpful helpful to better explain the existing process. This would avoid duplication of effort and improve the coherence of the process.

#### **Additional comments**

- **Question 23:** *Do you have any other comments on any area of the document 'A new fit for purpose regulatory framework for the higher education sector'?*

There remain considerable and important uncertainties around the situation for HE funded through the Department of Education and Department of Health. We strongly urge BIS to work with these departments in a transparent and joined-up way to resolve uncertainties.

With regard to Degree Awarding Powers and University Title, consideration will need to be given to the arrangements which will need to be applied in the event of a change of ownership of the body concerned.

