

# **Principles for Better Regulation of Higher Education in the United Kingdom**

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# **Principles for Better Regulation of Higher Education in the United Kingdom**

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### **Executive Summary**

The *Principles for Better Regulation of Higher Education in the United Kingdom (Principles)* were developed by the Higher Education Better Regulation Group (HEBRG) and apply primarily to organisations that have a direct responsibility for regulating or holding to account any aspect of higher education provision offered by UK institutions.

We expect that regulators and funding bodies, government departments, sector-specific agencies, professional, statutory and regulatory bodies (PSRBs), and higher education providers within the scope of the proposed single regulatory framework will wish to commit wherever appropriate to the following principles:

#### **Principle 1**

**Regulation should encourage and support efficiency and effectiveness in institutional management and governance.**

#### **Principle 2**

**Regulation should have a clear purpose that is justified in a transparent manner.**

#### **Principle 3**

**Regulation depends on reliable, transparent data that is collected and made available to stakeholders efficiently and in a timely manner.**

#### **Principle 4**

**Regulation assessing quality and standards should be co-ordinated, transparent and proportionate.**

#### **Principle 5**

**Regulation should ensure that the interests of students and taxpayers are safeguarded and promoted as higher education operates in a more competitive environment.**

#### **Principle 6**

**Alternatives to regulation should be considered where appropriate.**

## Section 1

### Introduction

1. Higher education benefits from regulation that is transparent, accountable, proportionate, consistent, and targeted only at cases where action is needed. Regulation must also be dynamic and responsive to new developments. The costs of regulation must be minimised while the benefits must be secured.
2. Students and employers need to be confident that providers of higher education will deliver high quality outcomes. Banks need to be confident that their investments will be repaid and the taxpayer expects proper accountability for public funds. Good regulation can enhance the higher education sector's reputation, support greater business opportunities and reduce the cost of borrowing. It reduces risks for students as they make important decisions with significant financial obligations.
3. Two key strengths of UK higher education are the quality and diversity of provision and its autonomous nature. Institutions are responsible for their own regulation and risk management. However, it is essential that this capacity for self regulation is balanced with accountability and an approach to regulation that is robust and mutually beneficial.
4. Changes to the regulation of higher education are a corollary of policies to enhance quality and increase diversity through a more market-based approach and increased competition. These changes will have an impact on many areas including funding models, data collection, provision of information, quality assurance and the protection of students' interests.
5. As students become major funders of higher education (in England) and their relationship with institutions changes, their expectations are likely to rise, not only regarding the educational experience, but also about the robustness of measures designed to protect their interests in a time of great change.
6. Responsibility for ensuring that the regulation of higher education remains proportionate and sustainable should be shared by institutions and those holding them accountable. It is essential for the reputation of the sector that academic integrity is not compromised by poorly conceived or hastily implemented regulation.
7. The *Principles* have been developed in consultation with HEBRG members, including the representative bodies of the sector and its agencies and funding bodies, and apply to organisations that have a direct responsibility for regulating or holding to account any

aspect of higher education provision offered by UK institutions. It is anticipated they will be relevant to higher education offered by any UK provider.

8. Since many organisations have regulatory or accountability responsibilities that are UK-wide, even though the major regulatory changes apply largely to England, an explanatory note has been added where necessary to clarify the position in Scotland, Wales and Northern Ireland.
9. In order for the *Principles* to support partnership working between regulators and institutions, either individually or through representative bodies, institutions should ensure that their internal regulatory systems and processes are fit for purpose. This enables open and transparent co-operation with regulators and supports efficient and effective responses to external regulatory and accountability requirements.
10. The *Principles* may also be of interest to regulators outside the UK who have a responsibility for aspects of UK higher education and regulators of higher education offered in the UK by foreign providers.
11. Finally, the *Principles* will be of interest to students, employers and the wider public, since they support a transparent approach to the regulatory and accountability framework for higher education.

## **Aims**

12. Due to the diversity of higher education provision, a large number of external organisations exercise a regulatory or accountability relationship with institutions. These include government departments, regulators of the professions and sector-specific agencies with discrete assurance requirements. There is a risk that the benefits arising from such diverse provision may be at the cost of increased burden if regulatory demands are not coordinated.
13. The primary aim of the *Principles* is to reduce duplication and enhance efficiency by supporting a commitment to coordinated regulation. The outcome should be enhanced public confidence in the quality and standards of UK higher education, sustained by regulation that is transparent, risk-based and proportionate.
14. The *Principles* also invite the sharing and dissemination of good practice in streamlining regulatory requirements.

## Background and scope

15. The *Principles* supersede the *Higher Education Concordat on Quality Assurance Arrangements and Data Collection (The Concordat)*<sup>1</sup> published in 2006 by the Higher Education Regulation Review Group (HERRG). The *Concordat* aimed to develop greater coherence in the regulation of the sector and invited regulators of higher education to sign up and demonstrate their commitment to developing proportionate approaches to regulation, relying as far as possible on institutions' own procedures. Signatories reported annually on their role as regulators and their progress in eliminating or reducing the overlap of regulatory requirements.
16. The *Concordat* focused on two specific regulatory functions, data collection and quality assurance. This reflected previous achievements in burden reduction and also indicated HERRG's intention to seek further streamlining in these two areas. By 2008, 29 organisations had either signed up or expressed interest in becoming a signatory. More recent research by HEBRG (March 2010) identified over 130 professional, statutory and regulatory bodies (PSRBs) that engage with higher education, indicating that there is scope to seek commitment to a revised and updated set of principles from a large number of organisations.
17. The *Principles* reflect changing views on regulation, including the Government's strategies for reducing red tape associated with business regulation. They also highlight the likelihood of a wider spread of risk to stakeholders in the new higher education environment and the potential for that to lead regulators to seek more robust regulation to mitigate those risks.
18. The Government has created the Reducing Regulation Cabinet sub-Committee to oversee all new regulatory proposals, and strengthened the remit of the independent Regulatory Policy Committee<sup>2</sup> to comment on the impact assessments produced for each new regulation.
19. The Better Regulation Executive provides guidance on introducing and reviewing new regulation, such as producing rigorous impact assessments and seeking behavioural change through non-regulatory approaches.
20. The concept of co-regulation, operating by a combination of voluntary self-regulation and an underlying obligation to uphold agreed codes of practice and high level

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<sup>1</sup> Higher Education Regulation Review Group (2006) *Higher Education Concordat on Quality Assurance Arrangements and Data Collection*. London: HERRG, available at: <http://www.bis.gov.uk/assets/biscore/corporate/migratedd/publications/h/he%20concordat.pdf>

<sup>2</sup> Regulatory Policy Committee (2011) *Challenging regulation*. London: Regulatory Policy Committee

regulatory oversight, offers institutions and regulators another model for balancing autonomy with accountability.

21. The Government's commitment to more effective regulation is clearly extended to higher education. The reduction in public funding for teaching allocated directly to institutions and the increased commitment made by individuals through higher student financing create potential risks for funders, institutions, students and employers, tax-payers and ultimately the Government itself. In other contexts, the response to increased risk is often to call for increased regulation in order to minimise the uncertainty.
22. Higher student financing places greater importance on value for money. To make informed judgements and mitigate the risk to individuals of making poor choices, it is essential to have good quality, useful, reliable and timely information about provision. Reassurance about institutions' financial standing, academic standards, the quality of awards and the learning opportunities offered to students should be provided.
23. The need to safeguard the public interest and the interests of students who have invested in higher education may lead to changes in regulation to ensure that appropriate communication and decision making processes exist for those who raise a complaint. Drawing on the student voice in the development of any such regulation will provide reassurance to students that their interests are protected.
24. Changes in the way institutions deliver courses may arise through new partnerships, and alternative providers may emerge in response to encouragement to enter the sector to widen student choice and increase access to higher education. These possibilities may appear to warrant additional regulation to secure what has been described as a 'level playing field' for the regulation of all providers of higher education, regardless of corporate status or funding streams.
25. In view of all these factors, the *Principles* promote proportionate, targeted and risk based regulation that contributes to public confidence in the quality of the outcomes of higher education. As far as possible, regulatory requirements should contribute to the effective and efficient functioning of institutions, whatever their organisational or corporate status, and avoid unnecessary duplication and inconsistency.

### **Implementation and review**

26. Organisations including regulators and funders, government departments, sector-specific agencies, professional, statutory and regulatory bodies (PSRBs), and higher education providers within the scope of the proposed single regulatory framework are expected to commit to these *Principles*.

27. They agree to adhere to these *Principles* and seek proportionate, risk based and targeted approaches to regulation. They will rely as far as possible on institutions' own processes, in order to reduce duplication of effort.
28. The *Principles* will be published on the HEBRG website.
29. The *Principles* will be reviewed regularly to ensure they remain relevant to future developments in the regulation of higher education.

## Section 2

### Principles for Better Regulation of Higher Education in the United Kingdom

#### Principle 1

**Regulation should encourage and support efficiency and effectiveness in institutional management and governance.**

30. Higher education institutions are autonomous and responsible for managing their own risks. Approaches to regulation should enable institutions to demonstrate accountability to users and funders in a manner that recognises trust in that autonomous status.
31. To ensure that scarce resources are not re-directed from frontline services to meet regulatory requirements, opportunities should be sought to draw on institutions' normal management and governance practices to demonstrate accountability and provide confidence to stakeholders.
32. Supporters of the *Principles* should deploy the most efficient and effective forms of regulation. This may include increased use of outcomes measurements such as 'deemed to comply' provisions, and moving from process-based regulation in the direction of outcomes-based regulation.
33. Commitment to the *Principles* indicates support for the review and evaluation of the impact, cost and effectiveness of regulation with users, including students, within an agreed timescale following the introduction of regulation. Additional measures may be adopted, such as a 'one in - one out' requirement or a 'sunset clause' ensuring that a regulation automatically ends on a given date unless it is re-established.

#### Principle 2

**Regulation should have a clear purpose that is justified in a transparent manner.**

34. The purpose of regulation and its impact on all stakeholders should be clear. The potential for unnecessary activity and 'gold-plating' should be minimised through clear communication between regulators and providers.

35. Regulators should consult on changes to regulation, offering stakeholders an opportunity to give advice on or challenge the proposed changes. This should be followed by formal feedback from the regulator on its decisions.
36. A rigorous impact assessment should take place prior to the introduction of any new regulation to ensure transparency and benefits that outweigh costs. The Better Regulation Executive has led the way in providing guidance on preparing impact assessments<sup>3</sup>. The *Principles* support this good practice of identifying the costs and justifying the benefits of proposals concurrently with consultation.
37. Typically, impact assessments should:
- a. explain the benefits of the proposed regulatory measure, wherever possible quantifying these;
  - b. provide detailed evaluation of the preferred option and a realistic second option;
  - c. consider alternatives to introducing new regulation such as improving the adoption of existing regulation or promoting a behavioural or cultural change;
  - d. consider not only the costs for HE institutions of complying with the regulation, but also costs associated with implementing the policy, for example:
    - i. new technology required;
    - ii. impact on the activities associated with the regulation, e.g. reduction in other areas, re-organisation;
    - iii. potential for stifling innovation;
    - iv. unintended consequences.
38. Not all regulation will have a direct impact on students, but in cases where it does, the student voice should be incorporated in the development of new regulation and assessment of its impact.

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<sup>3</sup> Better Regulation Executive (2011) *Impact Assessment Toolkit*. Version 2.0. URN: 11/518  
Available at: <http://www.bis.gov.uk/policies/better-regulation/policy/scrutinising-new-regulations/preparing-impact-assessments>

### **Principle 3**

**Regulation depends on reliable, transparent data that is collected and made available to stakeholders efficiently and in a timely manner.**

39. A higher education provider's offer to students, its achievements and its value for money are demonstrated by its information provision and evidence of performance, based on reliable, timely, transparent data. Supporters of the *Principles* commit to specifying the purpose and range of data to be collected in the least onerous way possible. They accept that data should be collected once to be used many times, whenever practicable by multiple stakeholders, and should conform to available standards.
40. The core data from higher education providers including information on their students, staff and finances, is supplied by them on a regular basis to the Higher Education Statistics Agency (HESA). HESA co-ordinates this process, analyses and makes the data widely available. Institutions are responsible for the quality of the data they provide. HESA is responsible for maintaining the integrity of the datasets, the accuracy of its published information and the timely, accessible provision of data to all interested parties.
41. Data should be provided in accordance with agreed information standards to assist with data sharing and exchange.
42. Organisations and institutions that subscribe to the *Principles* will rely upon the data supplied by institutions to HESA and not duplicate it. If additional data is required, they will first approach HESA to see how best the additional data can be made available.
43. There will be situations when data not readily available through HESA are required by subscribers to the *Principles*. If HESA cannot supply the desired data to the timescales or extent required, it may be necessary to seek the information directly from the relevant institution liaising through HESA. Wherever possible, data should be requested using the format, definitions and information standards of the HESA returns or in the manner in which data are produced internally by the institution for its own purposes.
44. The *Principles* recognise the costs and practicality of producing additional data and the importance of keeping such demands to a minimum.

#### **Principle 4**

**Regulation assessing quality and standards should be co-ordinated, transparent and proportionate.**

45. The primary responsibility for academic standards and quality in UK higher education rests with individual institutions. Each is responsible for the standards of the awards it makes and the quality of the education it provides to students, and each has internal quality assurance procedures. External quality assurance is an important component in ensuring public confidence in quality and standards, and in contributing to a system that is accountable, transparent, flexible, responsive and public-facing. This principle is concerned with the external quality assurance activities conducted in UK higher education.
46. The Quality Assurance Agency for Higher Education (QAA) is the independent body responsible for safeguarding the public interest in quality and standards in UK higher education on behalf of the funding bodies. It carries out external quality assurance through audit and review processes, and publishes overall judgements on the effectiveness of institutions' management of standards and quality. It also offers guidance to institutions on maintaining and improving quality assurance processes through a set of reference points known collectively as the Academic Infrastructure. The Academic Infrastructure is to be restructured and developed over 2011/12 and 2012/13 as the UK Quality Code for Higher Education and will apply to higher education providers in the UK. QAA therefore offers assurance that institutions are managing standards and quality effectively at an institutional level. Commitment to the *Principles* indicates agreement to rely on this information and to avoid duplicating the activities of QAA.
47. However, in executing their functions, some organisations may need to review particular aspects of provision not already covered by the activities of QAA, such as subject level provision. This is particularly likely for programmes whose qualifications lead to professional recognition, or a pathway to professional recognition.
48. When carrying out these reviews, organisations will aim to keep bureaucracy to a minimum and reduce unnecessary burdens on institutions. Working as necessary with each other, with QAA and other regulators, they will:
- a. have due regard to the financial and practical costs of review activities for the Institutions involved;

- b. co-ordinate review activities with other bodies to reduce burden, for example, by considering the timing of visits and by sharing reports to rely where possible upon each other's findings, rather than duplicating them;
- c. regularly monitor the impact of their activities, with a view to identifying opportunities for better regulation;
- d. follow good practice by conducting regulatory impact assessments on new and revised activities;
- e. use processes and terminology that are consistent with or complement institutions' internal activities, and the Academic Infrastructure/ UK Quality Code for Higher Education.

49. Both internal and external quality assurance systems should provide opportunities for institutions to be self-evaluative. Self-evaluation and reflection are processes that in themselves offer institutions the chance to enhance their management of standards and quality. Quality enhancement should be respected as an aspect of institutions' quality management that is designed to produce, within the individual contexts that institutions operate, steady, reliable and demonstrable improvements, notably in the quality of learning opportunities. External scrutiny should allow institutions to set out their own approaches to bringing about quality enhancement while maintaining the need for robust quality assurance arrangements.

#### **Principle 5**

**Regulation should ensure that the interests of students and taxpayers are safeguarded and promoted as higher education operates in a more competitive environment.**

50. As higher education operates in an increasingly market-based and competitive environment, with students investing more money in their own higher education, regulation should support students in exercising effective and informed choice about where to study.
51. The *Principles* support the promotion of the interests of students affected by regulation, whatever their social background or wherever they study.
52. Commitment to the *Principles* indicates support for students' access to an external, independent process for dispute resolution in cases where the issue cannot be resolved through the providers' internal process.

**Principle 6**

**Alternatives to regulation should be considered where appropriate.**

53. Regulators should recognise and trust institutions' self-regulatory behaviours and their maintenance of consistent high professional standards. They should work with institutions to identify non-regulatory solutions to regulatory and accountability challenges where possible.

54. Examples of non-regulatory approaches include:

- a. Sharing the regulatory role with the institution in accordance with the principle of co-regulation, for example, through endorsement of codes of practice agreed by the institution.
- b. Contributing to the availability of clear information, advice and guidance, for example, through transparent, interpretative guidelines about processes, to empower students and institutions to exercise informed judgements and modify their behaviour.

**For further information, please contact:**

Higher Education Better Regulation Group (HEBRG)  
Woburn House  
20 Tavistock Square  
London WC1H 9HQ

Tel +44 (0)20 7419 5621  
Email [info@hebetterregulation.ac.uk](mailto:info@hebetterregulation.ac.uk)  
Web [www.hebetterregulation.ac.uk](http://www.hebetterregulation.ac.uk)

**About the Higher Education Better Regulation Group**

The Higher Education Better Regulation Group (HEBRG) was established in early 2010 as the successor to the Higher Education Regulation Review Group (HERRG). It is supported by Universities UK and GuildHE and funded by the Higher Education Funding Council for England, the Scottish Funding Council, the Higher Education Funding Council for Wales and the Department for Employment and Learning (Northern Ireland). HEBRG is committed to raising the profile of better regulation for higher education, increasing understanding of its benefits and enhancing communication between the sector and its regulators. HEBRG has an independent chair, Sir Graeme Catto, and the membership is composed of representatives from higher education institutions, regulators, funding bodies, sector agencies, representative bodies and government departments.