Regulatory Policy Committee

# Securing Student Success: the regulatory framework for HE in England.

## Department for Education

## RPC rating: Fit for purpose

## Description of proposal

The Department for Education (DfE) proposes to combine the regulatory functions currently undertaken by the Higher Education Funding Council for England (HEFCE) and the Office for Fair Access (OFFA), under a single new regulator, the Office for Students (OfS), which is expected to function more as a risk-based market regulator than as a funding body (the model previously followed by HEFCE). The Department will also introduce a Teaching Excellence Framework (TEF), which will present information on the quality of teaching offered by institutions. Institutions scoring well against this framework will be permitted to increase their fees. Under the new framework, the Office for Students will also be tasked to ensure that providers have suitable mechanisms in place for improving access to Higher Education (HE) for students from disadvantaged backgrounds.

The Department notes that there have been significant changes in the way the HE sector operates over the last two decades – in particular an increase in the number of new entrants to the market and a shift from grant-based to loan-based finance so that students – rather than Government – are more clearly the funders of HE.

As a result, it argues that there is a clear rationale for a shift towards a more market-based approach, which will lower barriers to entry still further by reducing the reliance of new entrants on incumbents (for example, with respect to degree awarding powers). It expects that such an approach will also reduce information asymmetries between students and providers of HE, and will make the regulatory burdens placed on different providers more consistent. It also notes that the elements of the measure relating to improving access for disadvantaged students are introduced, with the intention of improving equity rather than on a strict economic rationale.

The consultation stage impact assessment had a preferred option that included three categories of providers: approved providers, with a lighter touch regulatory regime and a lower fee cap; approved (fee cap) providers (with a full regulatory regime and a higher fee cap, plus access to other sources of government funding); and registered (basic) providers (with very limited regulatory requirements and no ability to charge loan funded fees). The registered basic provider category has been omitted from the final proposals, as consultation responses suggested it would be likely to create false assurance for students and produce disproportionate burdens for providers (given the very limited benefits accruing to them).

## Impacts of proposal

The main monetised impacts presented are:

- Costs to providers of setting up the new regulatory system and compliance with it, and in particular, participation in the TEF, arrangements for improving access for disadvantaged students, and new transparency requirements. These are clearly set out in a table on p17 of the impact assessment, and amount to £10.3 million in total for one-off costs, plus an estimate of between £7.9 million and £12.4 million per annum for recurrent costs (dependent upon numbers of institutions joining and remaining within the framework in each year). These figures have been updated, relative to the consultation stage IA, by uprating to 2018 figures, and have been tested with the OfS and with the sector. Some figures have been revised based on a set of more accurate estimates from the OfS, and on revised modelling based on the experience of the first two years of TEF;

- Benefits to providers arise from a lower frequency of reviews which applies to most low-risk providers (in particular, replacing annual redesignation with a random sampling regime); reduced barriers to entry (in particular around degree awarding powers and university title); and increased access to international students (for some institutions). These are clearly set out in a table on p17 of the impact assessment, showing an increase from around £14.4 million to around £33.1 million per annum over the appraisal period, as the number of institutions that are affected increases;

- Benefits to providers from a reduction in the duplication of OfS and Home Office regulatory activity, for those providers offering Tier 4 student visas. These rise from an estimated £1.5 million to an estimated £3.2 million over the period of the appraisal.

- Costs to students and government, and the matching benefits to providers arising from increases in the caps applied to fees. These amount to a transfer from students and/or government to providers, rising from an estimated £20.7 million to an estimated £49.8 million over the appraisal period;

- Benefits to students and matching costs to providers, arising from bursaries and other access measures put in place by the providers as a result of the new arrangements for increasing access – these amount to a transfer from providers to students rising from an estimated £8.4 million to an estimated £20.2 million over the appraisal period;

- Costs to government arising from the need to manage increases in the number of applicants to the TEF, is estimated at £0.2 million per annum from 2019/20 onwards; and

- Benefits to government from the fact that the new OfS will be funded by fees charged to providers, whereas the previous regulator was solely funded by government. This is a transfer from providers to government estimated at £5.5 million per annum, and offsets some of the costs to providers set out above.

The Department also expects that there will be benefits to students through increased transparency and competition in the sector, which it expects should lead to increased innovation, improvements in quality and reductions in price. Similarly, it expects benefits to society from increased access to university for disadvantaged students and an increased ability for UK institutions to compete for international students. The Department does not attempt to monetise these benefits, but notes that it expects these benefits to be significant. Overall, the monetised benefits amount to a net saving, from the reductions in the regulatory requirements, applied to some institutions.

## Quality of submission

The analysis presented is based on modelling carried out for the Department's consultation stage assessment. The analysis has been updated based upon new information. In particular, the modelling now makes use of information supplied during the consultation, and takes into account policy changes since the consultation. It now includes more detail on the OfS's proposed standards and planned approach, and on the impacts on institutions where there are overlaps between the immigration system and the OfS's approach. It also presents some sensitivity analysis based on simple upper and lower bounds. However, this sensitivity analysis could be improved by making more use of the individual variances derived elsewhere in the IA.

Overall, the IA provides a clear and proportionate assessment of the impacts of the measure upon business and on society as a whole, and is therefore fit for purpose. The RPC also appreciates the Department's attempts to corral a large amount of complex analysis within a single IA.

As we noted in our Opinion at consultation stage, it is occasionally difficult for the reader to understand when different costs and benefits have, and have not, been netted off within the various tables, and the IA could be improved by a clearer indication of this - though the IA has been clarified since the consultation stage. The calculations around the University Title application process are especially unclear and should be clarified. The assessment could also be improved by expressing more clearly the residual risks to students, should institutions or courses close, and any change in these risks from the reductions in barriers to entry combined with the activities of the OfS.

The small and micro business assessment (SaMBA) explains that the Department expects that the measure will be net beneficial to smaller institutions and sets out appropriate reasoning for this expectation. It also explains why it thinks that all incumbent HEIs are large businesses, while some of the alternative providers that will gain easier market access are small businesses.

The Department has committed to producing a post-implementation review of the legislation and has set out some of the information that it expects to use to inform such a review. It argues that the lags inherent in the proposed changes mean that the review should not be completed before 2022, at the earliest, but does not give a clear date by which a review will be completed or set out a monitoring and evaluation plan. The IA could be considerably improved by doing so.

**Departmental assessment**

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| Classification | Qualifying regulatory provision (OUT) under the rules for the 2015-17 BIT. |

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| Equivalent annual net direct cost to business (EANDCB) | -£13.6 million |
| Business impact target score | To be confirmed |
| Business net present value | £137.8 million |
| Overall net present value | £20.1 million |

**RPC assessment**

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| Classification | Under the framework rules for the 2015-17 parliament:<br>qualifying regulatory provision (OUT) |
| Small and micro business assessment | Sufficient |
| RPC rating (of initial submission) | Fit for purpose |

**Jonathan Cave, Stephen Gibson, and Brian Morgan did not contribute to this Opinion, on the grounds of a possible conflict of interest.**

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