

## **Response to HEFCE Consultation on Financial Memorandum: conditions of grant payment to institutions (September 2013/21)**

**Q1:** *Do you agree that the draft revised FM fully takes account of the regulatory landscape that currently exists with no new primary legislation?*

Yes.

*Do you have any comments?*

We have concerns that additional regulations (such as a new designation process) risk duplicating the conditions in the FM.

We are also concerned about the effective regulation of providers not subject to the FM and would encourage HEFCE and BIS to give further consideration to the identification and management of risks there.

HEFCE should keep the FM (and the wider regulatory landscape) under review over the next few years and consult the sector on any proposed changes.

**Q2.** *Does the draft revised FM adequately place the collective student interest alongside the public interest?*

It does so to a limited degree.

*Do you have any comments?*

The collective student interest in the FM is that it should enable HEFCE to regulate institutions in such a way as to manage and mitigate risks to the financial sustainability of individual universities. There is an inherent tension between, on the one hand, the student interest which may be to reduce (or not see increased) fee levels, and on the other the public interest in the sustainable provision of high quality higher education teaching and research. The student interest is essentially a short to medium term one (limited to the duration of their study). The public interest will be longer term.

Additionally, we note that there are aspects of HEFCE's role, not least its arrangements to support research, where the collective student interest should *not* be paramount.

**Q3.** *Do you agree that the current distinction between short-term and long-term borrowing is no longer appropriate, and should discontinue within future arrangements?*

Yes

*Do you have any other comments?*

There is no longer a clear distinction between long term and short term borrowing and the FM should not seek to limit borrowing by reference to such definitions.

**Q4.** *We have set out alternative approaches to how the risks to the public and the collective student interest around financial commitments are addressed by HEFCE. We would welcome comments on and preference for each of these.*

We recognise the need for HEFCE to be able to have oversight and some degree of control over financial risk.

It may be appropriate to use more than one indicator in setting a threshold that triggers a requirement for additional scrutiny by HEFCE. These indicators might relate to capacity to meet debt servicing costs both in the short term and the long term. HEFCE's approach in each case should fully reflect the diversity of institutions, and be informed by the substantial amounts of financial information already available to HEFCE for each institution.

Of the four options proposed, setting an alternative threshold based on earnings before interest, taxes depreciation and amortisation (EBITDA) as modelled in Graph D in the illustrative examples is perhaps the most useful. It appears to be the one most likely to allow HEFCE to manage the risks set out in paragraph 35 in the consultation paper. Whilst the proposed measure uses historic data for a single year, there may be an advantage in using an average figure across several years instead. These might include past, current and future years (consistent with financial forecasts).

We welcome the move away from the current Annualised Service Costs (ASC) approach, which is no longer appropriate. We also welcome the fact that the consultation has not been prescriptive as to possible alternative solutions.

**Q5.** *Do you agree that future requirements should be based on total financial commitments? If so, how are these best defined? If not, what should they be based on and why?*

There is unlikely to be a "one size fits all" approach which works for all institutions. The diversity of the sector means that a single definition of "total financial commitments" is problematic. Different institutions will have different risk profiles depending on the balance between (for instance), teaching and research, UK and overseas operations, and the extent of any commercial operations in the UK. Governing bodies are best placed to manage risks around financial commitments, having regard to the particular circumstances of each institution.

*Do you have any other comments?*

No

**Q6.** *Are there other alternatives we have not considered? If so please describe these and how they would manage the risks set out in paragraph 35 of this document.*

Another alternative would be a system where responsibility for assessing risk and taking decisions on lending is left to commercial lenders. We would expect lenders to be well able to reach a view on the affordability of any new financial commitment, although there could be an increased requirement on universities to provide information to allow the lender to reach a view. Such an approach might be less effective in ensuring value for money, as the lender's

interest in this and the public interest would not coincide. It would, however reduce the burden for HEFCE.

**Q7.** *Do you agree with the proposal to identify issues for prospective and current students in the register of HE providers (paragraphs 20 and 81 of the draft financial memorandum)?*

No. More work needs to be done before any final decisions are taken on information or flags to include in the register, and the presentation and interpretation of such information.

There may be an opportunity to use the register to provide students and others with useful information about institutions, and to increase transparency about the diversity of providers and their regulation.

But it is important that information is made public only where it is in the interest of students or the wider public to do so. It may not be in the interests of students to publish information if publication made an institution less financially sustainable. We note that previously HEFCE has waited three years before publishing their “risk list” of universities at risk of financial failure. In deciding what is in the interests of students or the wider public, HEFCE should consider the timing and potential impact of publication.

*Do you have any other comments?*

We note the intention to consult on the classification of universities as “at higher risk” or “not at higher risk”. It is important that any system of classification is clear and well understood, and that there is a process for effective resolution of any disputes regarding the inclusion of information on issues for students on the register. The reputational risks if inaccurate or incomplete information were published could be significant.

**Q8.** *Do you agree with the intention to require HEIs to subscribe to JISC?*

JISC is important. The move to a new membership model is potentially beneficial and will result in the costs of JISC falling directly on users.

Given this is the case, as a condition of accepting the new subscription model, we would wish to see changes in the governance arrangements for JISC so that subscribers have a greater say in the services provided and the associated costs.

We would not welcome any requirement for HEIs to subscribe to JISC beyond this initial period.

JISC also needs to improve its communication with universities about precisely what services they can expect during this three year period, and whether subscriptions can even increase during the period.

*Do you have any other comments?*

We would question the validity of the formula for calculating subscriptions based largely on institutional income.

**Q9.** Do you agree that the revised Audit Code of Practice at Annex A to the draft financial memorandum is sufficient to set out HEFCE's requirements? If not, what changes would you suggest?

The revised Audit Code of Practice is fit for purpose.

*Do you have any other comments?*

No

**Q10.** Do you agree with the proposed change to the second trigger for the repayment of Exchequer interest from HEFCE income to the total of HEFCE and SLC income?

Yes, although HEFCE should keep this measure under review, as there may be unintended consequences where eligible students choose not to take up loans from the SLC. This change would be appropriate in the light of the shift from funding teaching through HEFCE grant to funding through SLC income (tuition fees).

*Do you have any comments?*

No

**Q11.** Do you agree with the proposed changes to the annexes to the financial memorandum? If not, please set out what you would wish to see instead and why.

In annex B – Institutional engagement, support and safeguarding actions, there is a presumption that attaching conditions of grant or withdrawing grant in part or in full will be effective measures to manage HEIs "at higher risk". As the value of grant reduces this may no longer be the case.

It would be helpful if annex B could say something about how HEFCE would deal with an institution at higher risk that was in receipt of little or no HEFCE funding.

*Do you have any other comments?*

No

**Q12:** Do you have any other comments on the proposed revised financial memorandum that have not been covered in the preceding questions?

No