



Department
for Education

Memorandum to the Education Select Committee

**Post-legislative scrutiny of the Higher
Education and Research Act 2017**

December 2022



Memorandum to the Education Select Committee: Post-legislative scrutiny of the Higher Education and Research Act 2017

Presented to Parliament
by the Secretary of State for Education
by Command of His Majesty

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Contents

Introduction	5
HERA	5
The changing context and other legislation impacting HE	6
Part 1: The Office for Students (OfS)	8
Introduction	8
Sections 1 - 22	8
Implementation	10
Related reviews, guidance and documents	12
Preliminary assessment	12
Legal issues	14
Sections 23 - 28	15
Implementation	16
Related reviews, guidance and documents	16
Preliminary assessment	18
Legal issues	21
Sections 29 - 37	21
Implementation	22
Related reviews, guidance and documents	22
Preliminary assessment	23
Legal issues	24
Section 38	24
Legal issues	25
Related reviews, guidance and documents	25
Sections 39 - 41	25
Implementation	25
Related reviews, guidance and documents	26
Preliminary assessment	26
Legal issues	26
Sections 42 - 55	27
Implementation	27

Related reviews, guidance and documents	28
Preliminary assessment	28
Legal issues	29
Sections 56 - 60	29
Implementation	29
Related reviews, guidance and documents	29
Preliminary assessment	29
Legal issues	30
Section 61	30
Sections 62 - 63	30
Implementation	30
Preliminary assessment	31
Legal issues	31
Sections 64 - 67	31
Implementation	32
Preliminary assessment	32
Legal issues	32
Sections 67A - 67C	32
Implementation	33
Preliminary assessment	33
Legal issues	33
Section 68	33
Related reviews, guidance and documents	34
Legal issues	35
Section 69	35
Legal issues	35
Sections 70 - 74	35
Implementation	36
Related reviews, guidance and documents	36
Preliminary assessment	37
Legal issues	38
Section 75	38

Implementation	38
Related reviews, guidance and documents	38
Preliminary assessment	38
Legal issues	39
Section 76	39
Section 77	39
Sections 78 - 80	40
Implementation	40
Preliminary assessment	40
Legal issues	40
Sections 81 - 82	40
Sections 83 - 85	41
Part 2: Other Education Measures	42
Introduction	42
Sections 86 - 90	42
Implementation	42
Preliminary assessment	43
Legal issues	43
Part 3: Research	44
Introduction	44
Sections 91 - 103	44
Implementation	45
Related reviews, guidance and documents	45
Preliminary assessment	46
Legal issues	47
Sections 104 - 111	47
Implementation	47
Preliminary assessment	48
Legal issues	48
Part 4: General Section	49
Introduction	49
Sections 112 – 125	49

Implementation	50
Preliminary assessment	50
Legal issues	51
Secondary legislation	52

Introduction

1. This memorandum provides a preliminary assessment of the Higher Education and Research Act 2017 (HERA), conducted by the Department for Education (DfE) with input from the Department for Business, Energy and Industrial Strategy (BEIS) (part 3). HERA principally impacts Higher Education (HE) in England, though parts of the legislation extend to Wales, Scotland and Northern Ireland. HERA also affects research in the UK and, as such, spans both DfE's and BEIS's responsibilities.

2. HERA made provision for significant reform to the regulation and funding of the HE and research sectors through the establishment of the Office for Students (OfS) and UK Research and Innovation (UKRI). The OfS was established as a new regulator and funding body for HE in England, and UKRI was established as the body responsible for supporting and funding research and innovation in the UK (sponsored by BEIS).

HERA

3. HERA included a range of measures intended to place students at the heart of the system. The broad policy aims behind the act were to:

- a) increase choice and competition in HE by providing a single route into the sector and levelling the playing field between what were previously known as publicly funded HE institutions and alternative providers
- b) introduce a new, single regulator for HE to operate a risk-based approach to regulation, reflecting the changing funding landscape
- c) bring together the widening participation responsibilities of the Office for Fair Access (OFFA) with the funding responsibilities for the activity held by the Higher Education Funding Council for England (HEFCE), promoting social mobility
- d) simplify the approach to research and research funding, and support interdisciplinary activity.

4. The Act is divided into four substantive parts. Each part is divided into sub-parts and sections. This memorandum provides a preliminary assessment of the implementation and operation of each part by way of post-legislative scrutiny.

5. As the Act (then Bill) passed through Parliament, it was subject to much debate, scrutiny and amendment in both Houses. The then Universities Minister, Baron Johnson of Marylebone, noted ‘...there is probably no sector better represented in our upper chamber than Britain’s universities. By my count, there are some 215 peers with university interests. This bill has unsurprisingly benefited from unparalleled scrutiny and debate.’¹ This level of scrutiny, and the amendments brought forward, were considered beneficial to the eventual form of the Act in reflecting parliamentary and sector expertise.

6. Throughout this document, where formal research has not been commissioned or undertaken, our assessment is based on a thorough examination of the data and information available.

The changing context and other legislation impacting HE

7. It is important to note the changing context since HERA was given Royal Assent. For example, the UK has withdrawn from the European Union and experienced a global pandemic. These events have resulted in significant shifts in the social and economic environment that we, as a nation, and the HE sector, operate in. Most notably, due to the pandemic the country saw a significant change in how and where students study, and how HE is delivered, which is having a lasting influence on teaching and learning despite all COVID-19 measures having now been lifted. In response to the pandemic, the OfS conducted a review of blended learning to identify areas of best practice, as well as approaches that fell short of regulatory requirements. The review was concluded and published in October 2022.²

8. This context, as well as changes in political leadership, has resulted in a shift in government policy regarding HE. Additionally, in February 2018, the then Prime Minister, Lady Theresa May, launched the Review of Post-18 Education and Funding, which included a report prepared by an independent panel chaired by Sir Philip Augar ([the Augar Report](#)). The report made a suite of recommendations in relation to further and higher education and government policy has developed further as a result. This has culminated in consultations on the Lifelong Loan Entitlement (LLE) and broader HE reform, as well as an accompanying policy statement regarding student finance, following the publication of the [Interim Conclusion of the Review of Post-18 Education and Funding](#) in January 2021. The government plans to publish its response to the HE Reform and LLE consultations in due course, setting out further detail on the government’s policy agenda for HE.

¹ [Jo Johnson: Higher Education and Research Bill - GOV.UK \(www.gov.uk\)](#)

² [Students should expect high quality teaching, however courses delivered – OfS responds to blended learning review - Office for Students](#)

9. From 2025, the LLE will provide individuals with a loan entitlement to the equivalent of four years of post-18 education, worth £37,000 in today's fees, to use over their lifetime. This will be available for both modules and full courses regardless of whether they are provided in colleges or universities. The government wants to drive a transformative impact on post-18 study and bring the further and higher education systems closer together. People will have a real choice in how and when they study to acquire new life-changing skills.

10. It is also important to note the Skills and Post-16 Education Act (the Skills Act) received Royal Assent in April 2022. The Act aims to set the country up for success by giving people the skills and education they need for work. It puts employers at the heart of the skills system and gives them a vital role in shaping local skills provision in partnership with providers. It will also support people to study or retrain at any stage of their life with the reassurance that the skills they gain meet the needs of employers in their area. Building on HERA, the Skills Act amends HERA to:

- a) amend the definition of a "higher education course" to include a module of such a course (when taken separately from it) to make explicit that the OfS's powers in part 1 of HERA extend to modules
- b) put beyond doubt the ability of the OfS to regulate the quality of HE on the basis of absolute outcomes, by setting minimum levels of outcomes which all providers are expected to meet
- c) insert a new provision to give an express power for the OfS to publish its notices, decisions and reports, and to provide qualified protection from defamation claims.

11. The Higher Education (Freedom of Speech) Bill, which is currently before Parliament, will also amend HERA, subject to becoming law. The Bill will:

- a) strengthen freedom of speech duties on HE providers registered with the OfS and impose a new duty to promote lawful freedom of speech and academic freedom in HE. Similar duties will be imposed on constituent institutions of registered HE providers
- b) impose new freedom of speech duties on the students' unions of Approved (fee cap) providers (a category of registered HE provider) and provide for the OfS to regulate students' unions in relation to these duties
- c) provide for new registration conditions for HE providers in relation to freedom of speech and academic freedom
- d) create a new role on the OfS board, the Director for Freedom of Speech and Academic Freedom, to champion freedom of speech and academic freedom on campus, and to oversee the OfS's freedom of speech functions.

Part 1: The Office for Students (OfS)

Sections 1 – 85: Establishment of the OfS (1-2), The register of English higher education providers (3-4), Registration conditions (5-7), Mandatory registration conditions (8-12), Other registration conditions (13-14), Enforcement of ongoing registration conditions (15-21), Voluntary de-registration (22), Quality and standards (23-28), Access and participation (29-37), Student transfers (38), Powers to give financial support (39-41), Powers to grant degrees etc (42-55), Powers in relation to university title (56-60), Powers of entry and search (61), Information powers (62-63), Information duties (64-67), Financial sustainability (68), Efficiency studies etc (69), Funding of the OfS (70-74), Regulatory framework (75), Supplementary functions (76), Directions (77), Powers of Secretary of State to obtain information and advice (78-80), HEFCE and the DFA (81-82), Interpretation (83-85).

Introduction

12. Part 1 of the Act is primarily concerned with the establishment of the OfS as a new, sole and independent regulator and funding body for HE providers in England, as well as the establishment by the OfS of a new register of English HE providers. The OfS replaced HEFCE and OFFA. In broad terms, part 1 of the Act sets out the duties and functions of the OfS, and the Secretary of State's powers and duties in relation to it.³

Sections 1 - 22

13. Section 1 establishes the OfS as a body corporate and introduces schedule 1, which makes further provision about the OfS, for example, the membership and remuneration of its board, staffing, the delegation of functions and the laying of the OfS's annual report.

14. Section 2 sets out the OfS's general duties. Amongst other things, it requires the OfS to have regard to:

- a) the need to protect the institutional autonomy of English HE providers
- b) the need to promote quality and greater choice and opportunities for students, in the provision of HE by English HE providers
- c) the need to encourage competition between English HE providers, where competition is in the interests of students and employers, while also having regard to the benefits for students and employers resulting from collaboration between such providers

³ Secretary of State in this document refers to the Education Secretary except for in part 3, where it refers to the Business Secretary.

- d) the need to promote value for money in the provision of HE by English HE providers
- e) the need to promote equality of opportunity in connection with access to and participation in HE provided by English HE providers
- f) the need to use the OfS's resources in an efficient, effective and economic way
- g) so far as relevant, the principles of best regulatory practice, including the principles that regulatory activities should be:
 - i. transparent, accountable, proportionate and consistent
 - ii. targeted only at cases in which action is needed.

15. Section 2(3) further provides that, in performing its functions, the OfS must have regard to guidance given to it by the Secretary of State. In giving such guidance, the Secretary of State must have regard to the need to protect the institutional autonomy of English HE providers.

16. The Secretary of State has used this power to give guidance 24 times (as of 12 December), since the OfS was established. All written guidance under section 2(3) is published on the OfS website. All OfS decision-makers have regard to statutory guidance in making their decisions on the basis of the OfS board's scheme of delegation.

17. Section 3 stipulates that the OfS must establish and maintain a register of English HE providers and section 4 sets out the procedure for registration.

18. Sections 5 to 14 make provision about the determination and imposition of initial and general ongoing conditions of registration by the OfS. Section 5 requires the OfS to determine and publish initial and general ongoing registration conditions and empowers the OfS to revise those conditions. Section 6 gives the OfS the power to impose, vary and remove specific ongoing registration conditions on a particular institution. Section 7 requires the OfS to ensure that the initial registration conditions are proportionate to the OfS's assessment of the regulatory risk posed by an institution (that is, the risk of the institution failing to comply with regulation by the OfS). Sections 8 and 9 set out ongoing registration conditions relating to the provision and publication of information which the OfS must include either for every registered HE provider, or for registered providers of a description prescribed by regulations. Section 10 requires the OfS to ensure that HE providers of a description prescribed by regulations are subject to a fee limit condition. Schedule 2 makes further provision about the determination of the fee limits, and section 11 requires the OfS to publish a list regarding the fee limit condition. Sections 12 to 14 make provision about other initial and ongoing registration conditions, including conditions relating to access and participation, quality and standards, student protection plans and governance.

19. Sections 15 to 21 set out the OfS's powers in relation to breaches of the ongoing registration conditions and the associated procedures, including representation and appeals processes. The OfS may: impose monetary penalties (section 15 and schedule 3); suspend aspects of a provider's registration (sections 16 and 17); and remove providers from the register (sections 18 to 20). It may also refuse to renew a provider's access and participation plan (section 21).

20. Section 22 sets out the procedure for voluntary de-registration.

Implementation

21. These sections were brought into force at different times, with some provisions commencing from 1st January 2018, others from 1st April 2018, and others from 1st August 2019. The OfS was established in January 2018, prepared and published its regulatory framework (as required under section 75) in February 2018, and began the process of registering providers from April 2018. The register, which is published on the OfS's website, lists all HE providers that were judged to have satisfied the initial registration conditions at the point of registration, and provides information about their regulatory status, tuition fee limit, and registration conditions, together with other details.

22. The OfS's regulatory framework⁴, sets out the initial and ongoing conditions of registration that HE providers must satisfy to join and stay on the register. An HE provider in England must be registered if it wishes to:

- a) access public grant funding, and/or student support funding
- b) apply to the Home Office for a student sponsorship licence, or to maintain an existing licence
- c) apply for, or continue to hold, degree awarding powers (DAPs) and/or university title.

23. Providers can apply to be registered in one of two categories: Approved or Approved (fee cap). The Approved registration category is for providers that would like their students to have access to the student support system, such as tuition fee loans, and want to be able to apply for a student sponsorship licence, but do not want or need to be eligible for public grant funding and/or to have a cap on their tuition fees. The Approved (fee cap) registration category is for providers that want to be eligible for public grant funding, such as teaching and research grants, and have access to the other benefits of registration. Institutions in this category are subject to a fee limit condition and so have their tuition fees capped.

⁴ [OfS 2018.01 Securing student success: Regulatory framework for higher education in England \(officeforstudents.org.uk\)](https://www.officeforstudents.org.uk/2018/01/securing-student-success-regulatory-framework-for-higher-education-in-england/)

24. Regulations have been made under section 9 (prescribing the providers that are required to have a transparency registration condition) and section 15 (prescribing the maximum amount of the monetary penalty that may be imposed by the OfS, and the matters to which the OfS must or must not have regard when imposing such a penalty). Regulations have also been made under section 10, prescribing the providers that are required to have a fee limit condition, and the qualifying persons and courses in respect of which the fee limit applies.

Related reviews, guidance and documents

Section	Related document	Purpose	Date of issue
21	OfS 2018.01 Securing student success: Regulatory framework for higher education in England (officeforstudents.org.uk)	This document constitutes the regulatory framework for HE in England required under section 75 of HERA	February 2018
2(3)	Guidance from government - Office for Students	Statutory guidance from the government to the OfS.	March 2022
NA	Office for Students Strategy 2022 to 2025	Document - Strategy for 2022-25	March 2022
Schedule 1	HC 165 – Office for Students Annual report and accounts 2021-22 – June 2022	The OfS's latest annual report and accounts	June 2022
21	Securing student success: Regulatory framework for higher education in England - Office for Students	Lists the various amendments to the regulatory framework	Various

Preliminary assessment

25. Regarding sections 1 and 2, the OfS has operated as the regulator of English HE since 2018. It has taken on functions which formerly sat with HEFCE and OFFA, as well as new powers and functions in relation to the register.

26. Since its set up in 2018, a significant portion of the OfS's work has concentrated on ensuring that registered HE providers meet their regulatory requirements. In this period, the OfS has registered over 400 universities, colleges and other HE providers, giving assurance to students that the provider meets the OfS's regulatory requirements. As set out at paragraph 179, the OfS has made a number of amendments to the regulatory framework, including changes to the conditions relating to quality and standards, and introducing a time-limited condition to prevent uncontrolled unconditional offers during the COVID-19 pandemic.

27. The OfS has also undertaken a range of other regulatory activity, for example, introducing a regime for access and participation, and establishing and refining the Teaching Excellence and Student Outcomes Framework (TEF) to encourage providers to improve the quality of their teaching. As set out in the OfS strategy for 2022-25, its work over the next three years will build on these foundations, focusing attention on the regulation of quality and standards and equality of opportunity.

28. Regarding sections 3 and 4, the OfS maintains a register of English HE providers, which currently lists 409 providers (as of 12 December). Around 350 providers were registered in academic year 2018/19 when the OfS opened the registration process. Since then, the number of providers registering with the OfS has continued to increase, though voluntary de-registration and mergers have meant that some providers have left the register.

29. The government envisaged that HERA would encourage greater competition in the HE sector, which could result in a significant increase in the number of providers registering. While the government may have envisaged that more new providers would have registered with the OfS than have done so in practice, it is not currently government policy to actively seek to increase the numbers of HE providers. We consider that the new regulatory approach has established a single-entry route as intended, going some way in levelling the playing field between incumbent providers and those wishing to enter the sector.

30. Some HE providers continue to sit outside the regulatory remit of the OfS. There is no legal requirement to register with the OfS to deliver HE but providers do need to be registered to access the benefits outlined above. The OfS has refused to register 19 providers (as of 12 December) as they did not meet the initial conditions of registration.

31. Sections 5 to 14 make provision about the initial and ongoing registration conditions which registered providers are subject to and with which compliance is monitored by the OfS. These conditions are set out in more detail in the OfS's regulatory framework.

32. The OfS has had some cause to use its enforcement powers under sections 15 - 21, including imposing a monetary penalty, and would consider further use of these powers where appropriate. The low incidence of breaches of the registration conditions to date would suggest that these powers are important and effective in ensuring provider compliance. However, we, and the OfS, expect the OfS to have an increased focus on enforcement activity over the next three years, and to use its powers where appropriate as set out in its strategy.

33. It is important to note that the OfS's regulatory approach is designed to be predominantly principle-based and risk-based. In part, this reflects the complexity of the HE sector but it is also central to how the OfS interacts with providers, as the approach allows the OfS to make appropriate regulatory decisions about managing risks associated with individual providers.

34. Regarding section 22, 24 providers (as of 12 December) have voluntarily de-registered under this section for a variety of reasons. These include providers having merged or been acquired by other providers, no longer wishing to access the benefits of registration, or ceasing to deliver HE. We have not examined the impact of de-registration on the sector and students but given the minimal numbers we estimate that it would not be significant.

35. The establishment of the OfS, the introduction of the register and conditions of registration, and the initial registration process for HE providers have each been successfully achieved. The OfS is a functioning regulator, with an established board with a wide range of experience (including a student representative on the board who also chairs the OfS's student panel), delivering the functions and duties required of it in legislation, and starting to use the full range of its powers. There are areas where the OfS continues to develop and refine its regulatory approach, including through consultations and new guidance on conditions of registration. The OfS has recently consulted on, and published, changes to the 'B conditions' relating to quality and standards and the TEF, as discussed in more detail further on in this document.

36. While we consider that the establishment of the OfS has been broadly effective and that HERA provides a sound basis on which the OfS can and does perform its functions, we recognise that some sector stakeholders have raised concerns regarding the regulatory approach, do not believe the OfS is sufficiently risk-based and could do more to reduce regulatory burden. These concerns are focused on minimising regulatory burden for providers that pose minimal risk.

37. While the establishment of a regulator will necessarily result in increased regulation, the OfS has already taken steps to reduce burden, such as reducing enhanced monitoring requirements imposed on providers by 75%, removing the requirement for providers with an access and participation plan to submit a detailed monitoring plan in 2022, and streamlining communication.

38. The OfS also continues to identify ways to minimise burden on the sector, in line with its strategic goals, and we and the OfS will continue to engage with the sector on this matter.

39. It is important to note that the OfS is due to be subject to a review under the Public Bodies Review Programme in 2023/24, which will cover its efficacy, governance, accountability and efficiency.

Legal issues

40. In 2018, Bloomsbury Institute Limited applied to the OfS for registration. The application was refused and Bloomsbury challenged this decision by way of judicial review. The challenge failed at first instance in the High Court but succeeded on some grounds on appeal. The Court of Appeal held that the determination of criteria used to assess student outcomes for providers in internal OfS guidance had been wrongly delegated, and that the OfS should have consulted on the guidance. The OfS has now completed the consultation on its approach to regulating student outcomes and has implemented its new policy.

41. The government has also amended HERA to put beyond doubt the OfS's powers to assess the quality of HE provided by registered HE providers by reference to absolute measures of student outcomes and the OfS has consulted on and implemented a new condition of registration relating to student outcomes, as described at paragraph 50.

Sections 23 - 28

42. Section 13(1)(a) provides that the OfS may impose initial or ongoing registration conditions relating to the quality of, or the standards applied to, the HE provided by a provider (including requiring the quality to be of a particular level or particular standards to be applied).

43. Section 23 sets out the OfS's powers and duties in relation to the assessment of quality and standards. The OfS may assess, or make arrangements for the assessment of, the quality of, and standards applied to, HE provided by English HE providers. It must assess, or make arrangements for the assessment of, the quality and standards of HE provided by institutions that apply to be registered (to determine whether they satisfy the initial registration conditions relating to quality and standards) and by registered HE providers (to determine whether they satisfy the ongoing registration conditions relating to quality and standards). Section 23(3) makes clear that any assessment of standards is to be made against sector-recognised standards. Sector-recognised standards are defined in section 13(3).

44. Section 24 sets out that OfS must establish a Quality Assessment Committee to provide advice on the exercise of its functions under section 23, including where those functions are carried out by a designated body. It also stipulates criteria for the members of that committee.

45. Section 25 allows the OfS to make arrangements for a scheme to rate the quality of, and standards applied to, HE provided by English HE providers and, with appropriate consent, HE providers in Wales, Scotland and Northern Ireland. Section 26 makes provision for the preparation of a report on the scheme, prepared by a suitable independent person.

46. Section 27 and schedule 4 make provision about the designation of a body to perform the assessment functions. These are the functions of the OfS under section 23, and functions relating to the giving of advice on quality and standards when the OfS is granting degree awarding powers (under section 46). Schedule 4 sets out the process for designation of a body by the Secretary of State and makes provision about oversight of the body by the OfS. Section 28 gives the designated body the power to charge institutions fees for activity undertaken, or services provided, in the performance of the assessment functions.

Implementation

47. Parts of section 23 were brought into force from 1st January 2018 and the remainder were brought into force from 1st April 2018. Sections 24 and 28 were brought into force from 1st April 2018. Sections 25 and 27 were brought into force from 1st January 2018. Section 26 was implemented in August 2019. Section 23 has recently been amended by the Skills Act to clarify the OfS's powers in relation to the use of absolute measures of student outcomes to assess the quality of HE.

Related reviews, guidance and documents

Section	Related material	Purpose	Date of issue
13, 23 - 28	The regulatory framework for higher education in England - Office for Students and relevant Regulatory Notices	Sets out how the OfS performs its various functions and provides guidance for registered HE providers	April 2018
26	IFF Research on behalf of DfE (2019) Evaluation of Provider-level TEF 2016–17 (Year 2)	The evaluation of the initial impact of the TEF on the HE landscape	January 2019
26	Teaching Excellence and Student Outcomes independent review report	The review of the TEF	August 2019
26	Government response to the independent review of TEF	The response from government to the independent review of the TEF	January 2021
26	Teaching excellence framework: independent review	Sets out the aims, members and outcome of the independent review of the TEF and its advisory group	January 2021
13, 23	Consultation on quality and standards conditions	Quality consultations and any guidance on the B conditions	September 2021
	Student outcomes - Office for Students – Consultation	Proposals for the OfS's revised approach to regulating student outcomes	January 2022
25	Teaching Excellence and Student Outcomes Framework consultation	To consult on the terms of the scheme	January 2022

Section	Related material	Purpose	Date of issue
		to rate the quality of English HE providers	
13, 23	Conditions of registration - Office for Students	To give an overview of the revised conditions of registrations, including changes to the B conditions	March 2022
N/A	Skills and Post 16 Education Act 2022 [section 18]	To clarify the OfS's power to regulate quality using student outcomes	April 2022
13, 23	Securing student success: Regulatory framework for higher education in England - Office for Students	Revised conditions of registration	November 2022
N/A	Notice of determination of initial and general ongoing conditions of registration (officeforstudents.org.uk)	To set out the changes to the B3 condition, following the consultation on regulating student outcomes	July 2022
N/A	Regulatory advice 20 Regulating student outcomes (officeforstudents.org.uk)	To provide guidance on the approach to regulating student outcomes	July 2022
13, 23	Revised B3 condition	The revised B3 condition, following the consultation on regulating student outcomes	July 2022
N/A	Student outcomes consultation response analysis	Analysis of the responses to the OfS's consultation on regulating student outcomes	July 2022
25	Regulatory advice 22: Guidance on the Teaching Excellence Framework 2023 - Office for Students	Guidance for the Teaching Excellence Framework (TEF) exercise that the OfS will operate in 2022-23 (referred to as the TEF 2023)	October 2022

Section	Related material	Purpose	Date of issue
13, 23	Conditions of registration - Office for Students	Conditions of registration, including new B conditions	September 2022

Preliminary assessment

48. Our overall assessment of these sections is that they have provided an appropriate statutory basis to enable a proportionate and risk-based assessment of quality and standards. Initially, the OfS's focus was on the registration of existing providers funded by HEFCE and new providers that wished to register with the OfS. To ensure that the registration process could proceed without disruption for these established providers, the OfS drew on assessments of quality and standards conducted under the previous regulatory regime to inform its judgement about whether relevant initial conditions were satisfied. For new providers seeking registration, the OfS commissioned the designated quality body (see below) to undertake an assessment.

49. Driving up quality in HE in England remains one of the government's highest priorities. Through section 18 of the Skills Act, the government has put beyond doubt the ability of the OfS to assess the quality of HE provision by reference to absolute measures of student outcomes. This is an important step and reflects government's determination to ensure that English HE providers are delivering positive outcomes for students, past, present, and future.

50. The OfS has subsequently consulted on and implemented revised conditions of registration for quality and standards, including new numerical thresholds for student outcomes. This will enable the OfS to identify and tackle pockets of low-quality provision, including at course level, while fully considering the wider context for a provider's performance. The revised registration conditions and associated guidance cover:

- a) the academic experience of students, including course design, delivery support and resources available to students
- b) the support and resources available to students
- c) effective and reliable assessment and award
- d) use of sector recognised standards
- e) the delivery of positive student outcomes.

51. They impose clearer requirements that apply to all providers. For example, new condition B1 will provide the necessary platform for the OfS to regulate academic experience requirements more effectively and enable it to intervene more easily. This could be done through onsite inspections, where the OfS has concerns that courses may not be meeting minimum requirements, and on 26th May 2022, the OfS announced that it had launched eight investigations into registered providers. Assessments undertaken as part of these investigations will be made by academic experts commissioned by the OfS.

52. The government has encouraged the OfS to ensure that these investigations are visible and effective. Through section 33 of the Skills Act, we have added sections 67A, 67B and 67C to HERA to make express provision for the OfS to publish notices, decisions or reports given or made in the performance of its functions, including whether a provider is under investigation.

53. The Secretary of State has designated a body to perform the assessment functions, in line with section 27 and schedule 4. The Quality Assurance Agency for Higher Education (QAA) was designated as the quality body in April 2018 and has, to date, conducted assessments of quality and standards to inform OfS decisions. Where a designated quality body is appointed, the assessment functions cease to be exercisable by the OfS in so far as they relate to standards (section 27(3)). In so far as they relate to quality, they remain exercisable by the OfS concurrently with the designated quality body. The OfS retains responsibility for determining and imposing conditions of registration in relation to quality and standards and assessing compliance with these conditions. This means that the approach taken by the designated quality body must enable the OfS to make its regulatory decisions with confidence.

54. The OfS has put in place oversight arrangements to hold the designated quality body to account, as required by schedule 4 to HERA. The OfS has also exercised its powers under paragraph 10 of schedule 4 to issue general directions to the designated quality body about the performance of the assessment functions. In giving such directions, the OfS must have regard to the need to protect the expertise of the designated body and its ability to make an impartial assessment of quality and standards. The OfS has prepared a triennial report on the designated body and submitted this to the Secretary of State as required by schedule 4 of HERA.

55. On 20th July, the QAA announced its request to step down as the designated quality body after the current year of designation ends on 31st March 2023. The Secretary of State will consult on de-designation in due course and, together with the OfS, consider future arrangements for the assessment of quality and standards. The OfS has set out how it will undertake a number of assessment activities which are currently undertaken by the designated quality body on an interim basis from April 2023.⁵

56. The OfS established a Quality Assessment Committee in 2018 which gives advice to the OfS on the performance of the assessment functions.

⁵ [OfS sets out arrangements for assessing quality and standards from April 2023 - Office for Students](#)

57. The OfS has established the TEF under section 25 to assess excellence in teaching and learning, with over 300 HE providers currently holding a TEF award. The TEF panel assesses providers' excellence over and above the OfS's regulatory baseline for quality. Under the OfS regulatory framework, participation in the TEF is mandatory for registered English HE providers with over 500 students. Participation is optional for providers in the devolved nations with permission from their home nation.

58. An independent review of the TEF was undertaken to fulfil the requirements of section 26, led by Dame Shirley Pearce, and subsequently published in 2021. DfE evaluations and the independent review have shown that the TEF can play a significant role in encouraging quality and continuous improvement amongst providers, and help to improve outcomes for students. The main recommendations of the review were that:

- a) the TEF should remain a provider-level exercise, as a subject-level TEF could not be achieved without significant burden to the sector
- b) the OfS metrics group should address the Office for National Statistics' concerns around the comprehensiveness of metrics and data, and consider how metrics could measure the quality of learning delivered in a more flexible way over a student's lifetime
- c) the Graduate Outcomes assessment aspect should use more than just earnings and should take account of regional variations
- d) the provider submission should have a standard structure which also enables the student body to contribute
- e) there should be four rather than three ratings, with the top three signifying excellence to varying degrees, and a new bottom rating which will identify providers failing to show sufficient evidence of excellence.

59. In its response to the review, the government asked the OfS to develop a revised, reinvigorated provider-level TEF that builds upon the solid foundation already in place and to implement the recommendations from the review. The government also agreed that the TEF should continue to be linked to tuition fee levels to encourage excellence.

60. The OfS recently consulted on the future of TEF and published its response on 26th July 2022. The OfS published guidance on the new TEF assessment framework on 7th October 2022, and assessments are expected to be completed with new ratings published, from September 2023.

61. If the OfS no longer conducted a TEF exercise, this would remove its ability to assess and rate excellence in HE and mean that less information would be available to students considering where to study. It would also mean that ministers would no longer have the ability to vary providers' tuition fee limits by reference to a provider's TEF award, as envisaged by schedule 2 to HERA.

62. In addition to working with the OfS to implement the quality and standards regime under HERA, the government has introduced legislation to make it a criminal offence to provide or advertise cheating services to HE students. This was done through sections 26 to 30 of the Skills Act and is an important and necessary step towards ensuring that students' achievements are reliably assessed and academic standards are protected.

Legal issues

63. We and the OfS have found the provisions relating to the assessment of standards to be complex to apply in practice, because HERA gives the OfS the power to determine and enforce conditions of registration for standards, but reserves to any designated quality body the function of assessing standards in an individual case. This means that the OfS cannot always act quickly in cases where it considers there to be regulatory risk. There may be a case for amending these provisions through primary legislation in due course, to ensure they can be deployed more effectively in practice. Additionally, assessments of standards must be made against sector-recognised standards. While this ensures the sector is adequately involved in setting standards, the OfS finds that this may constrain their ability to take a more direct regulatory approach in some circumstances.

64. The de-designation of the designated quality body is another area where the legislation could potentially be rationalised. The Secretary of State is required to consult before removing the designation, and this applies even where the designated quality body consents to or has requested that the designation be removed. This could add unnecessary complexity and bureaucracy to the de-designation process in cases where the body consents. We recognise, however, that amending this requirement would need to be balanced against the interests of providers, students and other stakeholders, who are likely to have views about the identity and role of the designated quality body, and may want an opportunity to express those views. We have no plans to change the requirement to consult on the designation of the designated quality body.

Sections 29 - 37

65. Section 29 sets out the OfS's powers in relation to approving access and participation plans. This is for the purpose of an institution satisfying its initial and ongoing registration conditions relating to access and participation imposed pursuant to section 12. The OfS may issue guidance about the matters it will consider in deciding whether to approve a plan (section 29(3)), and the Secretary of State may make regulations about the procedure for the approval of plans, the matters to which the OfS must or must not have regard when approving plans, and the publication of plans.

66. Sections 30 – 33 make provision about the content of plans, their duration and variation, and give the Secretary of State powers to make regulations dealing with these matters.

67. Section 34 requires regulations made under sections 29 or 33 to include provision for the review of OfS decisions made under those sections.

68. Section 35 gives the OfS powers to identify best practice and provide advice on equality of opportunity to registered HE providers.

69. Section 36 places a duty on the OfS to protect academic freedom when undertaking its access and participation functions.

70. Section 37 gives the Secretary of State the power, by direction, to require a report on matters relating to equality of opportunity.

Implementation

71. Sections 29 – 37 were primarily implemented from 1st April 2018 with some subsections being commenced from 1st January 2018. The Higher Education (Access and Participation Plan) (England) Regulations 2018 were made under sections 29(5) to (7), 30(2), 32(1) and (3), 33(1), 34 and 119(5) and came into force in April 2018. Further to this, the OfS consulted and issued guidance to providers. HE providers must have an approved access and participation plan if they are registered with the OfS in the Approved (fee cap) category, and they wish to charge tuition fees above the basic rate. Registered HE providers that do not need to have an approved access and participation plan are required to produce and publish an annual access and participation statement.

72. The OfS's board has decided to delegate the OfS's access and participation functions to the Director for Fair Access and Participation (DFAP) who is appointed by the Secretary of State under schedule 1 to the Act. Chris Millward served as DFAP from 2018 to 2021 and was succeeded by John Blake, who was appointed from January 2022.

Related reviews, guidance and documents

Section	Related material	Purpose	Date of issue
12, 29 - 37	OfS 2018.01 Securing student success: Regulatory framework for higher education in England (officeforstudents.org.uk)	OfS's regulatory framework for HE in England	February 2018
	A new approach to regulating access and participation in English higher education: Consultation – Office for Students	Consultation proposals relating to the OfS's approach to access and participation in HE	September 2018
	A new approach to regulating access and participation in English higher education:	2018 consultation response	December 2018

Section	Related material	Purpose	Date of issue
	Consultation outcomes (officeforstudents.org.uk)		
29	Regulatory notice 1: Access and participation plan guidance – Office for Students	Provides guidance regarding access and participation plans for HE providers in England	September 2021
29	Regulatory advice 6: How to prepare your access and participation plan – effective practice advice – Office for Students	A guide to creating a successful access and participation plan for an HE provider in England	February 2019
Schedule 1	Letter from the Department for Education announcing the appointment of the new director for access and participation (officeforstudents.org.uk)	Letter from the Secretary of State and Universities Minister announcing the appointment of John Blake and setting new priorities for access and participation	November 2021
29	Advice on requests to vary access and participation plans to cover academic year 2023-24 – Office for Students	A guide to requesting variations to access and participation plans to address new priorities	12 April 2022

Preliminary assessment

73. 248 providers had an OfS approved access and participation plan in academic year 2021/22, in accordance with the regulatory framework, the relevant provisions of HERA and the access and participation regulations, above.

74. The Secretary of State has not yet had reason to use the power under section 37 but would consider doing so if circumstances called for such action.

75. The OfS conducts risk-based monitoring of a provider's delivery of the commitments in its approved access and participation plan. In the most recent round of monitoring, to consider progress made against plans for 2020-21, a desk-based exercise was conducted using a range of key indicators, including data from the OfS's access and participation dashboard, financial expenditure information for those providers which return annual financial accounts to the OfS, and other information such as notifications.

76. The OfS may intervene where it considers that there is an increased risk of a future breach of a condition of registration, in particular of condition A1, which relates to the requirement for providers to take all reasonable steps to comply with the provisions of their access and participation plans. The OfS may refuse to renew an access and participation plan where it considers that the provider has failed to comply with a general provision of its current plan or with its mandatory fee limit condition.

77. The Secretary of State issued guidance to the OfS in November 2021 confirming the appointment of John Blake as the new DFAP and asking the OfS to refresh the access and participation regime, including rewriting national targets for access and participation. The objective was to move providers away from what ministers felt was a potentially bureaucratic regulatory process, and one which could be overly focussed on access, rather than participation and outcomes. The OfS responded by announcing a consultation in autumn 2022 that proposed a new approach for plans for the start of academic year 2024/5. It should be noted that, in order to further reduce the regulatory burden on providers of making these changes, the OfS moved to an increasingly risk-based and targeted approach to monitoring provider progress for this academic year.

78. The sector has continued to make progress in terms of the absolute numbers of disadvantaged students accessing HE, with students from disadvantaged backgrounds (POLAR⁶ quintile 1) now 82% more likely to enter HE in 2021 compared with 2010.⁷

Legal issues

79. There have been no legal issues regarding these sections of HERA. The OfS has had no need to refuse to approve or renew any plans and the independent reviewer has had no cause to be involved.

Section 38

80. Section 38 sets out the OfS's duty to monitor the availability of schemes or other arrangements for student transfer and to include a summary of its conclusions in its annual report. This section was implemented from 1st August 2019.

⁶ The participation of local areas. The POLAR classification groups areas across the UK based on the proportion of the young population that participates in higher education. It looks at how likely young people are to participate in higher education across the UK and shows how this varies by area.

⁷ [UCAS Undergraduate sector-level end of cycle data resources 2021 | Undergraduate | UCAS](#)

81. Ongoing registration condition F2 requires providers to provide to the OfS, and publish, information about their arrangements for students to transfer to other HE providers. The OfS conducted an exercise in 2019-20 to collect information and assess provider compliance with this condition. The OfS published reports in December 2020 and November 2021 setting out an analysis of student transfer data for full time students on first degree courses.

82. As mentioned earlier in this document, the LLE may contribute to greater levels of credit transfer between providers.

Legal issues

83. There have been no legal issues with this section of HERA.

Related reviews, guidance and documents

Section	Related material	Purpose	Date of issue
38	Student Transfers	Experimental statistics on students changing courses from 2012-13 to 2017-18	December 2020
38	Student Transfers	Experimental statistics on students changing courses from 2012-13 to 2018-19	November 2021

Sections 39 - 41

84. Section 39 gives the OfS the power to make grants, loans or other payments to eligible HE providers or qualifying connected institutions (for the purposes of the provision of education or connected facilities or activities by the provider) and any person (for services connected to the provision of education by an eligible HE provider). The Higher Education (Transparency Condition and Financial Support) (England) Regulations 2018 prescribed that HE providers registered in the Approved (fee cap) category are eligible for OfS funding under section 39. Section 40 gives the OfS the power to make grants, loans or other payments to institutions maintained by local authorities or further education providers (for the purposes of the provision of eligible HE courses).

85. Section 41 makes provision regarding the terms and conditions of such support.

Implementation

86. Sections 39 – 41 were brought into force from January 2019.

Related reviews, guidance and documents

Section	Related material	Purpose	Date of issue
39	Funding competitions: bidding guidance – Office for Students	Guidance for HE providers submitting bids for funding under OfS funding competitions	January 2020
40	Terms and conditions of funding for 2021-22 – Office for Students	Terms and conditions of funding that apply for the academic year 2021-2022	July 2021
39	Capital funding for financial years 2022-23 to 2024-25: Formula allocations and invitation to bid – Office for Students	Sets out the arrangements for the distribution by the OfS of capital grant for the three financial years (April to March) 2022-23, 2023-24 and 2024-25	May 2022
39	Recurrent funding for 2022-23 – Office for Students	Outlines the decisions taken by the OfS on funding for 2022-23	June 2022

Preliminary assessment

87. As the principal funding body for HE, the OfS regularly uses the powers conferred by sections 39 and 41 to provide government grant funding to the HE sector, subject to terms and conditions.

88. This includes the distribution of the Strategic Priorities Grant (SPG), over £1.4 billion in annual funding, to eligible HE providers. The SPG includes annual recurrent and capital grant funding. This is used to support teaching, including of expensive-to-deliver subjects (such as science and engineering), and at world-leading specialist providers. The SPG also provides additional funding to providers to enable them to support students. Other funding made available through the SPG has been used for challenge competitions, such as for mental health, and hardship funds, including during the COVID-19 pandemic.

89. The OfS sets the terms and conditions attached to the funding it distributes to HE providers on an annual basis.

90. The OfS has had no cause to use the section 40 powers thus far.

Legal issues

91. There have been no legal issues regarding these sections of HERA.

Sections 42 - 55

92. Section 42 enables the OfS, by order, to authorise registered HE providers to grant taught and research awards, including degrees. Section 43 provides for supplementary powers that may be given with authorisation, including, for example, giving providers the power to authorise other institutions to grant awards on their behalf. The orders made so far by the OfS are listed in the secondary legislation table at the end of this document.

93. Sections 44 and 45 set out the OfS's powers to vary or revoke, by order, section 42 authorisations, and other authorisations to grant degrees if certain conditions are met.

94. Section 46 requires the OfS to seek and have regard to advice from the relevant body (the designated quality body) regarding the quality of, and standards applied to, the HE provided by a provider before making an order under section 42, 44 or 45.

95. Section 47 sets out the OfS's duty to notify the Secretary of State of authorisations made under section 42, where the provider has not previously acted under a validation arrangement.

96. Section 48 sets out the procedure for the variation or revocation of an authorisation for degree awarding powers, and section 49 sets out the rights to appeal such a decision.

97. Section 50 enables the OfS to enter into arrangements with authorised registered providers to require such providers to offer to enter into validation arrangements. Section 51 gives the Secretary of State the power, by regulations, to authorise the OfS to enter into validation arrangements, or require the OfS to do so, with registered HE providers.

98. Section 52 makes consequential amendments to the Further and Higher Education Act 1992 (FHEA), and sections 53 and 54 make amendments to the Education Reform Act 1988 (ERA) regarding unrecognised degrees.

99. Section 55 protects the right of the Archbishop of Canterbury (or other person) to award a degree under the Ecclesiastical Licences Act 1533 in certain circumstances.

Implementation

100. Sections 42, 44, 45 and 46 were brought into force from 1st April 2018, with some parts coming into force from 1st January 2018.

101. Sections 43, 47, 48, 49, 53, 54 and 55 were brought into force from 1st April 2018.

102. Sections 50 and 51 were brought into force from 1st August 2019.

103. Section 52 has not yet been brought into force because there is still one legacy application in process.

Related reviews, guidance and documents

Section	Related material	Purpose	Date of issue
42	Regulatory advice 12: How to apply for degree awarding powers (officeforstudents.org.uk)	To set out guidance and the application process for degree awarding powers	24 October 2018
44, 45	Regulatory advice 17: variation and revocation of degree awarding powers - Office for Students	To set out guidance on variation and revocation of degree awarding powers	9 December 2019

Preliminary assessment

104. Degree Awarding Powers (DAPs) have been granted (or varied) by the OfS in 28 cases since HERA came into force. This has involved granting extended powers to some providers that already held powers through pre-HERA legislation and making new awards to providers that did not previously hold DAPs.

105. The OfS has not revoked any section 42 authorisations as it has had no reason to do so. However, this may change in the future.

106. The OfS has requested advice from the designated quality body for all of the 28 cases mentioned above.

107. Under HERA, the OfS must notify the Secretary of State when it makes any DAPs award under section 42, where the provider has not previously operated under validation arrangements. To date, it has notified the Secretary of State of four new DAPs authorisations made by the OfS (out of the 28 made overall).

108. The OfS has recently used its section 50 powers to appoint the Open University to offer a partnership option to further education colleges interested in providing high quality vocational and technical education at levels four and five.⁸

109. To date, it has notified the Secretary of State of four new DAPs authorisations made by the OfS (out of the 28 made overall).

110. Section 55 maintains the status quo that existed prior to HERA with regard to Ecclesiastical Licences Act 1533.

⁸ [OfS launches pilot for colleges to offer more vocational and technical qualifications - Office for Students](https://www.officeforstudents.org.uk/news-events/news/2019/09/09/OfS-launches-pilot-for-colleges-to-offer-more-vocational-and-technical-qualifications)

Legal issues

111. There have been no legal issues regarding these sections of HERA.

Sections 56 - 60

112. Section 56 amends section 77 of FHEA and gives the OfS responsibility for approving the use of university title in an institution's name.

113. Section 57 amends section 39 of the Teaching and Higher Education Act 1998 (THEA) and provides that a registered HE provider must not use university title unless its use is authorised by an Act or Royal Charter, or approved by the OfS.

114. Section 58 sets out the OfS's powers to revoke, by order, an authorisation, approval, or other consent for an institution to use university title if certain conditions are met.

115. Section 59 specifies the procedure for the revocation of an authorisation to use university title and section 60 sets out the process for appeals against revocation.

Implementation

116. Sections 56 – 60 were all brought into force from April 2018 or 2019.

Related reviews, guidance and documents

Section	Related material	Purpose	Date of issue
58	regulatory-advice-13_how-to-apply-for-university-college-and-university-title.pdf (officeforstudents.org.uk)	To set out guidance and the application process for university title	11 April 2019

Preliminary assessment

117. Section 39 of THEA, as amended by section 57 of HERA, applies to all HE providers registered with the OfS. It prohibits the use of the word "university" in the name of a registered HE provider unless this is either approved by the OfS or authorised by any Act or Royal Charter.

118. In addition, an HE provider wishing to register a company or carry on a business using or under a name including the word "university", requires the approval of the Secretary of State under the Companies Act 2006. The way this works in practice is that the applicant obtains the non-objection letter from the DfE and submits it to Companies House.

119. The OfS has used its powers to approve the use of "university" in one provider's name through a university title application and assessment process.

120. The OfS has had no cause to use the other powers in this section but would consider doing so if appropriate circumstances arose, and they remain important for the purposes of regulating English HE.

Legal issues

121. The provisions relating to university title are complex, with a potential for overlap in approvals required in cases involving the Companies Act 2006. However, government considers that issues are unlikely to arise in practice because DfE policy is that a provider with English DAPs which is registered with the OfS will not be given permission to use “university” in their name via this route, but will be required to fulfil the OfS criteria for DAPs (as set out in their guidance) and obtain university title under section 39 of THEA or section 77 of FHEA, with Companies Act approval being given by DfE as part of that process.

Section 61

122. Section 61 and schedule 5 enable the OfS or Secretary of State to apply to a justice of the peace for a warrant to allow authorised persons to enter and search certain registered HE providers’ premises (or those of linked institutions).

123. This section was brought into force from 1st April 2018. The OfS has not had cause to use these powers yet. However, there could be circumstances in the future where they would expect to, and they continue to provide an important safeguard in the event of serious breaches of registration or funding conditions, and for the purposes of regulating English HE and protecting public money more generally.

Sections 62 - 63

124. Section 62 gives the OfS the power to require information from unregistered HE providers for the purposes of the performance of its functions.

125. Section 63 makes provision for the OfS to cooperate and share information with other bodies, where it considers it appropriate to do so for the efficient performance of its own functions, or where the Secretary of State requires it to do so. It also makes provision for the OfS to cooperate and share information with a relevant person where it considers it appropriate to do so for the efficient performance of a relevant function of that person, or if required to do so by the Secretary of State.

Implementation

126. Section 62(1) to (4) were brought into force on 1st January 2018; section 62(5) was brought into force on 1st January 2019.

127. Section 63 was brought into force on 1st January 2018 and the Higher Education and Research Act 2017 (Cooperation and Information Sharing) Regulations 2018 were made in May 2018. These regulations prescribe relevant persons and functions for the purposes of cooperation and information sharing under section 63.

Preliminary assessment

128. Section 62 has been used by the OfS on a few occasions during the registration process to require providers to submit further information for assessment.

129. Section 63 has been used regularly by the OfS, and in many ways. For example, the OfS established a multi-agency taskforce for the purpose of planning and implementing student protection measures in the Academy of Live and Recorded Arts market exit case. This provision enabled the OfS to share relevant information with members of the taskforce, including market exit planning documentation and timing of likely market exit, to support transition arrangements for students.

130. There are further data sharing arrangements in place with a variety of bodies, including the Student Loans Company and the Office of the Independent Adjudicator (OIA) which are underpinned by section 63.

Legal issues

131. There have been no legal issues regarding these sections of HERA.

Sections 64 - 67

132. Section 64 sets out a requirement for compiling and making available to the OfS, UKRI and Secretary of State appropriate information relating to HE provision by a designated body (or the OfS if there is no designated body).

133. Section 65 sets out a requirement for the designated body (or the OfS if there is no designated body) to publish appropriate information relating to HE provision.

134. Section 66 and schedule 6 make provision for the designation and oversight of a body to perform the functions of compiling and publishing information under sections 64 and 65. Designation and de-designation of a body requires a notice to be published by the Secretary of State. HERA also requires that, where a body has been designated, the OfS must have regard to the views of that body when deciding what is appropriate information for the purposes of section 64 and 65. It also makes provision for the OfS, UKRI or Secretary of State, by notice, to require the designated body to provide them with information.

135. Section 67 enables a body designated under schedule 6 to charge an annual fee to registered HE providers for carrying out the compilation and publication functions under sections 64 and 65.

Implementation

136. Parts of section 64 to 66 were brought into force on 1st January 2018, with other parts being brought into force on 1st April 2018.

137. Section 67 was brought into force on 1st August 2019.

Preliminary assessment

138. The Secretary of State designated the Higher Education Statistics Agency (HESA) as the body to perform the functions in sections 64 and 65. HESA has continued to compile and publish information about HE, allowing the OfS to regulate the sector more effectively, and giving policymakers and the public access to good quality official statistics. With effect from 4th October 2022, HESA merged with Jisc, a not-for-profit digital, data and technology agency focused on tertiary education, research and innovation. Prior to the merger, the Secretary of State consulted on the de-designation of HESA and the OfS consulted on whether Jisc would be suitable to be designated as the designated body. Following the outcome of these consultations, HESA was de-designated and Jisc was designated on completion of the merger. This enabled the performance of the information and data functions under HERA to continue seamlessly, despite the merger.

139. The Office for Statistics Regulation (OSR) highlighted in its [systematic review of the public value of post-16 education and skills statistics](#) that the more focused data remit of the OfS and efforts to reduce data burden have impacted the consistency and usefulness of information across UK nations, such as data on the HE workforce and estates.

Legal issues

140. There have been no legal issues regarding these sections of HERA. As with the provisions relating to the designation of a quality body, it is noted that the Secretary of State is required to consult even in circumstances where the body consents to, or requests, the removal of the designation. It may be helpful to consider how this process could be simplified in these circumstances, though this would require primary legislation to amend schedule 6 to HERA. As with the provisions relating to the designation of a quality body, we would not envisage any changes to the requirement to consult on designating a data body.

Sections 67A - 67C

141. Sections 67A, 67B and 67C were introduced as amendments to HERA through the Skills Act.

142. Section 67A allows the OfS to publish notices, decisions and reports given or made in the performance of its functions and sets out what the OfS must consider in publishing such information.

143. Section 67B requires the OfS to publish a notice where it terminates an investigation without making any findings or where the findings result in the OfS taking no further action. It also sets out circumstances in which section 67C does not apply.

144. Section 67C provides that the publication of a notice, decision or report is privileged unless it is shown to have been made with malice, for the purposes of defamation claims.

Implementation

145. Sections 67A, 67B and 67C were brought into force on 28th June 2022. The OfS subsequently consulted on its approach to publishing information about providers on the basis of these provisions, publishing the [outcome of its consultation and regulatory advice on its approach to publication of information on 30th September 2022](#).

Preliminary assessment

146. The OfS uses its publication powers routinely, in relation to policy matters and in relation to individual providers. It has recently concluded its consultation on its policy approach to the publication of information about providers. It published the outcome of the consultation alongside new regulatory guidance on 30th September 2022.

Legal issues

147. There have been no legal issues regarding these sections of HERA.

Section 68

148. Section 68 sets out the OfS's duty to monitor and report on the financial sustainability of registered HE providers that receive, or are eligible to receive, public funding in the form of OfS financial support or student finance. This section was fully brought into force from 1st August 2019.

149. The OfS collects financial data from HE providers, and analyses this to ensure it has an up-to-date understanding of the sustainability of the sector. The OfS is planning to enhance its approach through the development of an integrated model to bring together and assess the impacts of ongoing, multiple and system-level risks to financial sustainability, carry out sensitivity analysis and test scenarios.

150. Where the OfS identifies concerns about the financial viability of an HE provider, it will take appropriate steps, which may include requiring more information or requiring the provider to take steps to protect the interests of students in the case of market exit. In March 2021, the OfS introduced a new registration condition, following consultation, to give it the power to intervene swiftly and in a targeted way when they consider there to be a material risk that a registered provider may cease the provision of HE.

151. The OfS regularly discusses trends, patterns, risks and issues with the DfE and includes summary findings in its annual report. The OfS has published detailed analysis of the financial sustainability of the HE sector, with the last full report being published on 30th June 2022.

152. On 9th March 2022, the National Audit Office published its report “[Regulating the financial sustainability of higher education providers in England](#)”. The report noted the positive contribution of the OfS, alongside government and the leadership of HE providers, in ensuring that the sector was able to navigate the significant financial challenges posed by the pandemic. Recognising that the OfS was a “young” regulator, the NAO identified areas on which it should focus as it continues to mature. These included suggestions on developing its understanding of financial sustainability issues and building the sector’s confidence in the OfS’s approach.

153. On 15th June 2022, the House of Commons’ Public Accounts Committee (PAC) published its report, following its hearing prompted by the NAO report. Its recommendations for the OfS covered the same ground as the NAO report, encompassing the further development of OfS’s approach to fulfilling the section 68 duty. The [OfS responded to the PAC](#) in July 2022 setting out its current approach to financial sustainability and protecting students, its current analysis of the position of the sector and its plans for the development of its work on financial sustainability.

Related reviews, guidance and documents

Section	Related material	Purpose	Date of issue
68	Regulatory notice 6: Condition C4: Student protection directions - Office for Students	To set out condition C4 of the regulatory framework	31 March 2021
68	Financial sustainability of the higher education sector in England (parliament.uk)	Public Accounts Committee report on the financial sustainability of the HE sector in England	15 June 2022
68	Financial sustainability of higher education providers in England - 2022 update	Report on the financial sustainability of	30 June 2022

Section	Related material	Purpose	Date of issue
		HE providers in England	

Legal issues

154. There have been no legal issues with this section of HERA.

Section 69

155. Section 69 gives the power to the OfS to arrange for studies to improve economy, efficiency and effectiveness in the management or operations of a registered HE provider. This section was brought into force from 1st August 2019.

156. The OfS has not yet had need to use section 69. While the OfS has conducted a review of this nature, the circumstances were such that it did not need to rely on this power.

157. However, the OfS is increasingly interested in the management and governance of providers, and how these matters can relate to other areas and potential breaches of the registration conditions, so would envisage using this power in the future.

Legal issues

158. There have been no legal issues with this section of HERA.

Sections 70 - 74

159. Section 70 provides that the OfS may, in accordance with regulations made by the Secretary of State, charge providers fees for their initial and ongoing registration. Section 71 provides that the OfS may, in accordance with regulations made by the Secretary of State, charge other fees for activity undertaken, and services provided, in the performance of its functions which is specified in the regulations. Section 72 stipulates that fee income must be paid to the Secretary of State unless directed otherwise (with HM Treasury consent).

160. Section 73 gives the OfS the power to recover costs incurred in imposing a sanction on a provider. schedule 7 sets out further detail on procedure, appeals and recovery.

161. Section 74 gives the Secretary of State the power to make grants to the OfS, subject to such terms and conditions as the Secretary of State considers appropriate. Terms and conditions may be framed by reference to particular courses of study but are subject to the restrictions set out in subsections (4) to (6). In determining the terms and conditions, the Secretary of State must also have regard to the need to protect the institutional autonomy of English HE providers.

Implementation

162. Sections 70 and 74 were brought into force from 1st January 2019.

163. Section 71 and 73 were brought into force from 1st August 2019.

164. Parts of section 72 were brought into force from 1st January 2019 and others from 1st August 2019.

165. The Higher Education (Registration Fee) (England) Regulations 2019 made provision for the payment of an initial registration fee and an annual fee for ongoing registration. The amount payable by the institution depends on the number of full-time equivalent students on HE courses at the institution. There is an exemption for institutions with no more than 300 full-time equivalent students which qualify as micro-entities by reference to section 384A of the Companies Act 2006. There is also a reduced fee for new providers with no more than 1,000 full-time equivalent students for up to three years after initial registration. These regulations were amended in 2021 to implement a 3% reduction in the annual ongoing fees payable by institutions from 1st August 2021.

Related reviews, guidance and documents

Section	Related material	Purpose	Date of issue
70	The Higher Education (Registration Fees) (England) Regulations 2019 (legislation.gov.uk)	First fee regulations which set out how much the OfS can charge each registered provider	April 2019
70	Office for Students registration fees consultations	Consultations seeking views on how registered HE providers' annual registration fees charged by the OfS will be calculated.	April 2019
74	Notification to the OfS by the Secretary of State for Education	Notification to the OfS from the Secretary of State of the terms and conditions for the allocation of funding for world-leading specialist providers in the 2021/22 academic year	March 2021
70	The Higher Education (Registration Fees) (England) (Amendment) Regulations 2021 (legislation.gov.uk)	Amended registration fee regulations amending the fees which the OfS can charge each registered provider	April 2021
74	Guidance from government - Office for Students	Sets out guidance from government including	Various

Section	Related material	Purpose	Date of issue
		funding allocations and priorities.	

Preliminary assessment

166. The provisions set out in section 70 enable the OfS to charge providers registration fees and, with permission from HMT, to retain those fees. As a result, the majority of the OfS’s operating costs are funded by registered HE providers. Previously, funding for the predecessor body, HEFCE, was provided by government. The shift in approach with the formation of the OfS has moved funding to a more sustainable footing, reflecting the financial circumstances at the time of the change.

167. The requirement on registered providers to pay registration fees annually places a financial burden on the sector. However, through [the Higher Education \(Registration Fees\) \(England\) \(Amendment\) Regulations 2021](#), the Department has sought to mitigate the impact of this on small and new providers by subsidising those providers through “new provider” and “micro provider” exemptions. The department reduced registration fees for academic year 2021/22 by 3% and subsequently froze fees for academic year 2022/23 in light of the financial difficulty faced by some providers during and after the pandemic.

168. It was anticipated that a review of the OfS fee model would be carried out after two years of the fees being in operation. This review has been delayed due to COVID-19 and will be undertaken in due course. The review will take into account the impact of the OfS’s new and extended functions, for example in relation to freedom of speech.

169. The OfS has not charged other fees under section 71, but the Department laid the Higher Education (Investigation Fees) (England) Regulations 2022 in November 2022, which came into force on 8th December 2022.⁹ These will enable the OfS to charge a provider a fee for the costs of an investigation where the investigation results in one of several specified outcomes, such as the imposition of a specific ongoing registration condition.

170. The OfS has not yet had any need to use its cost-recovery power under section 73. However, it is likely to do so in future as it steps up its regulatory and enforcement activity.

⁹ [The Higher Education \(Investigation Fees\) \(England\) Regulations 2022 \(legislation.gov.uk\)](#)

171. The Secretary of State regularly uses the power conferred by section 74 to provide grant funding to the OfS, which it distributes to eligible HE providers under the powers in sections 39-41. The Secretary of State generally gives statutory guidance to the OfS to set out funding priorities but has imposed terms and conditions using the power in section 74(1) on two occasions since the Act came into force, both in 2021.

Legal issues

172. There have been no legal issues regarding these sections of HERA.

Section 75

173. Section 75 gives the OfS the duty to prepare and publish a regulatory framework, which is to consist of a statement of how it intends to perform its functions and guidance for registered HE providers on the general ongoing registration conditions.

174. The statement must make clear how the OfS intends to perform its functions in relation to a registered HE provider in proportion to the regulatory risk posed by the provider.

175. Section 75 also makes provision about what the guidance may, in particular, specify, and requires that the OfS consult the sector before publishing the framework.

Implementation

176. Section 75 was brought into force from 1st January 2018. The government consulted on the regulatory framework between October and December 2017 (relying on section 118 of HERA) and the OfS published its regulatory framework in February 2018.

Related reviews, guidance and documents

Section	Related material	Purpose	Date of issue
75	OfS 2018.01 Securing student success: Regulatory framework for higher education in England (officeforstudents.org.uk)	To set out the regulatory framework for HE in the UK	28 February 2018

Preliminary assessment

177. As set out previously in this document, the OfS published its regulatory framework in February 2018 and has operated a risk-based approach to regulation since 1st August 2019.

178. The regulatory framework has developed over time, with the OfS conducting consultations on amendments as necessary.

179. A number of amendments have been made to the regulatory framework since it was introduced in 2018. For example, during the COVID-19 pandemic, it was amended to introduce a temporary condition of registration in relation to unconditional offers. Changes have also been made in respect of revised conditions of registration, and to introduce a new ongoing condition of registration to enable the OfS to intervene more quickly and in a targeted way when it considers there to be a material risk that a registered provider may cease the provision of HE.

180. The regulatory framework is published on the OfS's website along with various regulatory notices and advice notices. This guidance continues to help providers understand how the OfS and the ongoing registration conditions operate, and what they need to do to comply.

Legal issues

181. There have been no legal issues regarding these sections of HERA.

Section 76

182. Section 76 gives the Secretary of State the power to make regulations giving the OfS supplementary functions. These are functions that may be exercised for the purpose of the performance of the Secretary of State's functions under primary or secondary legislation, or the doing of anything else that the Secretary of State has power to do. The functions must relate to an institution in England which provides HE, or may do so, or the activities of such an institution. It also enables the Secretary of State to direct that his or her functions in relation to an institution's property may be exercised by the OfS, where the Secretary of State is entitled to a right or interest in respect of that property.

183. This section was brought into force from 1st April 2018 but is yet to be used. However, the power exists should a situation arise where the Secretary of State sees fit to confer supplementary functions on the OfS, for example to delegate functions where they would be better delivered by an independent body or an organisation with a more direct working relationship with the sector.

Section 77

184. Section 77 gives the Secretary of State the power, by regulations, to give the OfS general directions about the performance of any of its functions. This power is subject to restrictions described in subsections (2) to (4) and (5). This section was brought into force from 1st January 2018 but is yet to be used. Generally, the Secretary of State has given guidance to the OfS under section 2, rather than using this power of direction. However, the power exists should the Secretary of State see the need to direct the OfS to take specific action on the performance of its functions.

Sections 78 - 80

185. Section 78 gives the Secretary of State the power to require information and advice from the OfS regarding any of its functions. Section 79 gives the Secretary of State the power to require application-to-acceptance information from bodies providing admissions services to English HE providers. Section 80 describes how that information may be used.

Implementation

186. Section 78 was brought into force from 1st January 2018 while sections 79 and 80 were brought into force from 1st April 2018.

Preliminary assessment

187. The Secretary of State regularly requests information from the OfS using section 78. This has proved an effective method for DfE to obtain the information it needs from the OfS, for example, to help inform new and emerging HE policy, to understand and monitor any concerns in relation to quality and standards, to better understand and support issues relating to student experience and mental health, and to respond to parliamentary questions and correspondence. DfE and the OfS have agreed arrangements to ensure that requests made under section 78 powers are made by authorised personnel only and are appropriate and non-duplicative. These arrangements are reviewed regularly as necessary.

188. The section 79 power has been used to obtain application-to-acceptance information from UCAS and secure the data sharing agreement, in place as of March 2022. This data enables research into the admissions system, student choice and potential barriers to social mobility within the HE system.

Legal issues

189. There have been no legal issues with these sections of HERA.

Sections 81 - 82

190. Sections 81 and 82 dissolve HEFCE and the office of the Director of Fair Access to Higher Education (DFA). These sections were brought into force from 1st April 2018 and HEFCE and the office of the DFA therefore ceased to exist at that point. The regulatory, funding and access and participation functions of HEFCE and the DFA were transferred to the OfS, in line with the ambitions of HERA, with no legal issues.

Sections 83 - 85

191. Section 83 defines terms used in part 1 of the Act, including key terms such as “English higher education provider”, “higher education provider”, “higher education” and “higher education course”.

192. Section 84 enables the Secretary of State to designate a provider of HE as an institution for the purposes of part 1 of the Act if certain conditions are met.

193. Section 85 defines other terms which are used in part 1 of the Act.

194. These provisions were brought into force on 1st January 2018 and 1st April 2018 with no legal issues.

Part 2: Other Education Measures

Sections 86 – 90: Power to make alternative payments (86), Section 86: consequential amendments (87), Other amendments relating to financial support (88), Qualifying institutions for purposes of student complaints scheme (89), Higher education corporations in England (90).

Introduction

195. Part 2 of the Act:

- a) amends existing legislation to enable regulations to make provision for alternative financial support for students
- b) makes changes to legislation governing the student complaints scheme operated by the OIA
- c) includes measures to deregulate HE corporations
- d) makes various consequential amendments.

Sections 86 - 90

196. Sections 86 – 88 make amendments to existing legislation regarding financial support for students, in particular THEA. These sections were introduced to enable the implementation of Sharia-compliant student finance with a view to helping those who, for religious reasons, are unable to take out interest-bearing loans to support their education. They also make further consequential and technical amendments to THEA and other legislation, for example, to enable student finance regulations to cross-refer to matters determined or published by the OfS.

197. Section 89 amends the definition of qualifying institution for the purposes of the OIA student complaints scheme established under the Higher Education Act 2004, and makes consequential amendments to the Equality Act 2010 and the Counter-Terrorism and Security Act 2015.

198. Section 90 introduces schedule 8, which amends the ERA in so far as it relates to HE corporations in England, including provisions relating to their powers and how they are dissolved.

Implementation

199. Section 86 – 87 have not yet been brought into force.

200. Section 88 was brought into force on 1st April 2018.

201. Section 89 has been brought into force in part:

- a) subsections (1) to (2)(b)(ii), (2)(d) to (2)(h)(i), (2)(i) to (3), (5) to (7) were brought into force on 1st April 2018
- b) subsection (2)(c) is still to have a date appointed.

202. Section 90 was brought into force on 1st August 2019.

Preliminary assessment

203. Sections 86 and 87 have not yet been brought into force and we therefore cannot assess their impact.

204. The government remains committed to delivering an alternative student finance (ASF) product that is compatible with Islamic finance principles. In 2018, following the passage of HERA, DfE appointed specialist advisers, the Islamic Finance Council UK (UKIFC), to support our work on detailed policy design for ASF. The UKIFC helped us develop a Takaful model on which a Sharia-compliant ASF policy specification could be based.

205. Since then, DfE has been considering the timing and implementation of ASF alongside a competing and complex set of demands, conducting the Review of Post-18 Education and Funding and – in February 2022 – announcing major reforms to the student finance system to put it on a more sustainable footing for the long term. We are also introducing the LLE, which will significantly change the ways students can access learning and financial support. We remain committed to ASF and are currently considering if and how ASF can be delivered as part of the LLE. A consultation on the detail and scope of the LLE closed on 6th May 2022, and we expect to provide a further update on ASF as part of our response to this.

Legal issues

206. There have been no legal issues with these sections of HERA.

Part 3: Research

Sections 91 – 111: Establishment of UKRI (91-92), Research and innovation functions and role of the Councils (93-98), Strategies and strategic delivery plans (99-100), Funding and directions (101-103), General functions (104-108), Supplementary (109-110), Interpretation (111).

Introduction

207. The establishment of UK Research and Innovation (UKRI) and the transfer of staff and assets from the legacy organisations in the manner set out in HERA was successfully achieved in 2018. Since that time, UKRI has effectively pursued its objectives set for it by Government as detailed in three Annual Reports and Accounts laid in Parliament, unqualified by the NAO. UKRI's role was significantly expanded over that time, underpinning the Industrial Strategy via development of significant new funding programmes. This has taken place in a complex and challenging period, including exit from the European Union and an impressive contribution to the Nation's response to COVID-19 through rapid and impactful R&D programmes. UKRI has been subject to a recent Departmental Review conducted by Sir David Grant which was published in July 2022. The review findings were broadly positive, support the original case for UKRI, but indicated that the complex task of integrating the nine formerly independent Councils into one body remains a work in progress. With reference to HERA, the review highlighted some perceived ambiguity regarding the autonomy of the individual Councils with respect to the overarching board, and whether the number of ministerial appointments set out in schedule 9 was administratively practicable. In response to these points, further enhancements of UKRI's corporate operations, strategic impact, governance framework, and the interface with BEIS are in progress.

Sections 91 - 103

208. Section 91 establishes UKRI as a body corporate. Section 91(3) refers to section 92 and schedule 9 which contain further provision about UKRI. Section 92 lists the individual committees/councils of UKRI, namely: the Arts and Humanities Research Council; the Biotechnology and Biological Sciences Research Council; the Economic and Social Research Council; the Engineering and Physical Sciences Research Council; the Medical Research Council; the Natural Environment Research Council; the Science and Technology Facilities Council; Innovate UK; and Research England. Section 92, subsection 2-6 sets out how the Secretary of State may make changes to the Councils listed in subsection 1.

209. Section 93 sets out the legal powers (or functions) exercisable by UKRI, which include carrying out research into science, technology, humanities and new ideas, and facilitating, encouraging and supporting such research. Section 94 makes further provision about the giving of financial support by UKRI under section 92. Specifically, power to make grants, loans or other payments which may be given on such terms and conditions as UKRI considers appropriate. Sections 95 to 98 provide for UKRI to make arrangements for the exercise of the functions by the Councils on UKRI's behalf. Section 95 is specific to exercise of functions by the seven science and humanities Councils (formerly the Research Councils), section 96 is specific to exercise of functions by Innovate UK and section 97 is specific to exercise of functions by Research England. Section 98 sets out how UKRI may further delegate functions to the Councils, or exercise them directly.

210. Section 99 provides that, if the Secretary of State requests, UKRI must prepare a research and innovation strategy which must specify the period before the end of which each Council must submit a strategic delivery plan to UKRI under section 100, and the period to which such a plan must relate. Section 100 applies where UKRI publishes a research and innovation strategy under section 99.

211. Section 101 sets out conditions for grants to UKRI from the Secretary of State. Section 102 specifies that the Secretary of State may give UKRI directions about the allocation or expenditure by UKRI of grants received under section 101.

212. Section 103 sets out that the Secretary of State must have regard to the Haldane principle, balanced funding principle and advice from UKRI, when giving a grant under section 101, determining any terms or conditions of a grant or giving a direction under section 102.

Implementation

213. Sections 91 – 103 were brought into force on the 30th March 2018, bringing the UKRI into existence and bringing together the seven individual research councils, the Technology Strategy Board (Innovate UK) and the research and knowledge exchange functions of HEFCE.

Related reviews, guidance and documents

Reference	Related material	Purpose	Date of issue
N/A	Annual report and accounts – UKRI	The annual reports and accounts of UKRI	Various
93 – 98	Evaluation reports – UKRI	To evaluate and monitor UKRI investment	Various
99 - 100	UKRI Strategic Prospectus published (soci.org)	Sets out UKRI's Strategic Prospectus	14 th May 2018

Reference	Related material	Purpose	Date of issue
99 – 100	UKRI Strategy 2022-2027	Sets out UKRI's Strategy from 2022 - 2027	17 th May 2022
99 – 100	Delivery plans – UKRI	Sets out the roles of the research councils in delivering UKRI's strategy	Various
101 – 103	UKRI's budget allocation explainers – UKRI	Sets out detailed breakdowns of UKRI's budget allocations from 2022 - 2025	Various

Preliminary assessment

214. BEIS has not undertaken research on the impact of the implementation of sections 91 to 103 so the below represents an assessment based on the information and data we are able to access. UKRI has been subject to a Departmental Review (the successor to the Cabinet Office's Tailored Review programme). This was led by Sir David Grant and was published in July 2022.

215. Under sections 91 and 92, UKRI has operated as the primary Government body to deliver UK research and innovation funding since 2018, taking on the role and functions of Innovate UK and the seven Research Councils, and the research and knowledge exchange functions which formerly sat with the HEFCE. The Councils have remained as set out in section 92.

216. UKRI has made extensive use of the functions and powers set out in section 93 and 94 with £35 billion allocated to UKRI through the 2017-2021 spending review periods. Via the Councils listed in section 92, this has been invested in research, development and innovation primarily via grant funding of UK HE institutions, and businesses, but also through UKRI's own portfolio of research institutes, national facilities, and the affiliated Catapult network. The Catapult network is comprised of technology and innovation centres set up by Innovate UK to support businesses in transforming ideas into products and services.

217. UKRI and BEIS have agreed a number of strategy documents as set out in sections 99 and 100, a UKRI Strategic Prospectus in May 2018, and UKRI Strategy 2022 to 2027. Council Strategic Delivery Plans were published in 2019 and will be updated in line with the most recent UKRI strategy.

218. Since 2018, UKRI has been funded by grant-in-aid voted by parliament, by the BEIS Secretary of State using these powers. In accordance with subsection 5, BEIS has published financial allocations following each spending review at the granularity of individual Councils. The Secretary of State has not needed to give directions to UKRI and has had due regard to Haldane and balanced funding principles.

Legal issues

219. There have been no legal issues with these sections of HERA.

Sections 104 - 111

220. Section 104 sets out that in exercising its functions UKRI must have regard to the need to use its resources in the most efficient, effective and economic way and have regard to guidance given by the Secretary of State.

221. Under Section 105, UKRI must provide the Secretary of State with information and advice regarding its functions as may be required. Section 106 sets out that UKRI may arrange for studies for improving economy, efficiency, and effectiveness in carrying out activities in respect of which UKRI gives financial support to be promoted or carried out by a person.

222. Section 107 sets out provision of research services by UKRI. Section 108 sets out that UKRI should represent the UK internationally in any field connected to its functions if requested by the Secretary of State. Primarily this would be in matters relating to the Antarctic as the British Antarctic Survey is part of UKRI. Section 109 sets out that all eight listed research councils cease to exist, that the Royal Charters establishing them are revoked and that their property (including symbolic property) of such councils must be transferred to UKRI pursuant to a property transfer scheme.

223. Section 110 highlights amendments to powers to support research contained in the Science and Technology Act 1965 and the Higher Education Act 2004. This relates to powers to make a grant, loan or other payment. Section 111 sets out definitions.

Implementation

224. Sections 104 – 108, and 110-111 were all brought into force on 30th March 2018.

225. Section 109 has now been brought into force, except in relation to the Medical Research Council (MRC) Royal Charter. This is because the MRC owned an extensive array of assets within foreign legal jurisdictions, the ownership of which could not be transferred to UKRI via the asset transfer powers in section 115 and schedule 10, as UK law does not apply in foreign countries. In many cases, transferral of assets formerly belonging to the MRC in other countries requires the individual novation of deeds and contracts. This typically involves access to hard copy records in office locations overseas which was seriously hampered by the COVID-19 pandemic, setting back the timescale for completion of the asset transfer. In contrast to the other bodies mentioned in section 109, BEIS has decided to retain the Royal Charter of MRC unrevoked for the time being to allow administration of the ownership of these assets. However, the original MRC established by Royal Charter is an organisation in name only, it employs no staff, has no budget, and owns no assets. The sole member of the MRC Council is the UKRI Chief Finance Officer, a full member of the UKRI board.

226. Paragraph 8 of schedule 12 has not been commenced. This amendment replaces references to the Medical Research Council with UK Research and Innovation in section 24 of the Chronically Sick and Disabled Persons Act 1970. While the Medical Research Council remains legally extant (see discussion of section 109 above) and other sections in HERA revoking its Royal Charter have not yet been commenced, the duties set out in section 24 of the Chronically Sick and Disabled Persons Act are now more appropriately directed to UKRI. BEIS plans to commence this section of the Act in the new year.

Preliminary assessment

227. Since its creation UKRI has had regard to the general duties set out in sections 104 - 108 and has been overseen by its Accounting Officer acting in accordance with HMT's Principles of Managing Public Money. UKRI and BEIS engage closely including exchanges of advice and guidance, information and data. From time to time UKRI has commissioned consultancy services and institutes have provided research services to third parties, and UKRI has stood ready to represent the Government of the United Kingdom in matters relating to international relations.

228. Section 109 has been commenced as described above and with the exception of section 109 (1e) (which relates to the MRC) in relation to 109 (2) has served its purpose and will not be further used. Section 110 was commenced two months after the Act received Royal Assent and gave equivalent powers to the Secretary of State as provided to UKRI but these have not been utilised extensively.

229. Section 111 has provided useful clarity on the terms defined, including that science includes social sciences.

Legal issues

230. There have been no legal issues with these sections of HERA.

Part 4: General Section

Sections 112 – 125: Cooperation and information sharing between the OfS and UKRI (112), Joint working (113), Advice to Northern Ireland departments (114), Transfer schemes (115) Power to make consequential provision and transitional, transitory or saving provision (116-117), Pre-commencement consultation (118), Regulations (119), Directions (120), General interpretation (121), Minor and consequential amendments (122), Extent (123), Commencement (124), Short title (125).

Introduction

231. Part 4 of the Act makes provision for cooperation and information sharing between the OfS, UKRI and other relevant authorities. It also makes standard provision with respect to consequential amendments, transitional, transitory and saving provisions, regulations made under the Act, commencement and other matters.

Sections 112 – 125

232. Section 112 gives the OfS and UKRI the power to cooperate and share information with one another, and a duty to do so if required by the Secretary of State.

233. Section 113 gives the OfS, UKRI and other relevant authorities the power to exercise their functions jointly with each other if it will be more efficient or enable them to exercise their functions more effectively.

234. Section 114 sets out a power for the OfS and UKRI to provide advisory services to the Northern Ireland Executive relating to HE in Northern Ireland.

235. Section 115 introduces schedule 10 which contains provisions relating to the transfer of staff, property, rights, and liabilities in connection with the establishment of the OfS and UKRI and any closures resulting from the Act.

236. Section 116 enables the Secretary of State, by regulations, to make consequential provision, including amending, repealing, revoking or otherwise modify primary or secondary legislation, or, for specific purposes only, Royal Charters.

237. Section 117 sets out that the Secretary of State may, by regulations, make transitional, transitory, or saving provision in connection with the coming into force of HERA.

238. Section 118 sets out which bodies may conduct consultations on behalf of the OfS and UKRI prior to their establishment and defines terms for that purpose.

239. Section 119 sets out the parliamentary procedures which apply to different regulations made under the Act. It further sets out the different types of provision that the regulations may make.

240. Section 120 confirms the power to vary or revoke directions given under the Act.

241. Section 121 defines certain terms used in HERA and section 122 introduces schedules 11 and 12 which make minor and consequential amendments. Section 123 sets out the extent of different provisions of the Act.

242. Section 124 sets out when certain provisions of the Act come into force, and gives the Secretary of State the power to bring the remaining provisions into force by regulations.

243. Section 125 sets out the name of the Act and adds it to the list of Education Acts set out in section 578 of the Education Act 1996.

Implementation

244. Sections 112 to 114 were brought into force on 1st April 2018.

245. Section 115 came into force on 27th April 2017.

246. Sections 116 to 117 and sections 119 to 121 and sections 123 to 125 came into force on 27th April 2017.

247. Section 118 was brought into force on 1st January 2018.

248. Sections 119 - 121 came into force on 27th April 2017.

249. Section 122 was brought into force on various dates:

- a) 1st April 2018
- b) 31st October 2018
- c) 1st August 2019
- d) 30th March 2020

250. Sections 123 – 125 came into force on 27th April 2017.

Preliminary assessment

251. Sections 112 and 113 are used extensively for sharing data and joint working. Some examples are:

- a) the transparent approach to costing (UKRI and the devolved administrations)
- b) the postgraduate Black, Asian and Minority Ethnic joint programme (UKRI)
- c) Discover Uni (Devolved administrations)
- d) National Student Survey (NSS) (Devolved Administrations)
- e) Higher Education Innovation Fund funding (UKRI)

252. There is a data sharing agreement for the supply of specified datasets from the OfS to UKRI, and for the sharing of data between the parties in specified contexts. Section 112 provides the basis for these arrangements.

253. Section 113 has enabled joint working with the other HE funders and regulators (The Higher Education Funding Council for Wales, the Scottish Funding Council and the Department for the Economy: Northern Ireland) under the memorandum of understanding for student information – activities under this include the funding, development, management and running of Discover Uni (and its data return, Unistats) and the NSS.

254. Section 114 power has been used, for example in relation to the assessment of financial information from providers in Northern Ireland.

255. Section 115 was used to transfer relevant staff, property, rights, and liabilities to the OfS from April 2018, when it came into existence.

256. Sections 116 and 117 enabled the necessary consequential amendments and transitional, transitory and saving provision to be made to support a smooth transfer to the new regulatory system established by HERA.

257. Section 118 was used to conduct various consultations on behalf of the OfS prior to its establishment, including by DfE, on subjects such as the regulatory framework, the designation of data and quality bodies and OfS registration fees.

258. Section 119 has been used to make multiple regulations in accordance with the procedures set out in this section, without any significant issues.

259. Section 120 has not been used as no directions have been given, varied or revoked to date.

260. The implementation of sections 121 – 124 has not given rise to any significant issues.

Legal issues

261. There have been no legal issues regarding these sections of HERA.

Secondary legislation

Section	Title	Purpose	Commencement date
124	The Higher Education and Research Act 2017 (Commencement No. 1) Regulations 2017	Brings various provisions of HERA into force	January 2018
124	The Higher Education and Research Act 2017 (Commencement No. 2) Regulations 2017	Brings various provisions of HERA into force	January 2018
117	The Higher Education and Research Act 2017 (Transitory Provisions) Regulations 2017	Makes transitory provision to allow the OfS to prepare and publish a regulatory framework, to ensure that a body may be designated under schedule 4 and schedule 6 to the Act during the transitional period	January 2018
116 117 119	The Higher Education and Research Act 2017 (Consequential, Transitional, Transitory and Saving Provisions) Regulations 2018	Makes consequential, transitional, transitory, and saving provisions, in relation to the closure of the OfS's and UKRI's predecessor bodies and transition to the new bodies	April 2018
124	The Higher Education and Research Act 2017 (Commencement No. 1) (Wales) Regulations 2018 Rheoliadau Deddf Addysg Uwch ac	Makes specific provisions of HERA in Wales	April 2018

Section	Title	Purpose	Commencement date
	Ymchwil 2017 (Cychwyn Rhif 1) (Cymru) 2018		
124	The Higher Education and Research Act 2017 (Commencement No. 3) Regulations 2018	Makes various provisions of HERA	The provisions listed in regulation 2 came into force in April 2018. The provisions listed in regulation 3 came into force in March 2018
10 119	The Higher Education (Fee Limit Condition) (England) Regulations 2017	Makes clear the definition of registered HE providers “qualifying person” and the meaning of “qualifying course”	April 2018
124	The Higher Education and Research Act 2017 (Commencement No. 5) Regulations 2018	Makes various provisions of HERA	Various (January 2019, April 2019, and August 2019)
63	The Higher Education and Research Act 2017 (Cooperation and Information Sharing) Regulations 2018	Makes provisions in relation to cooperation and information sharing between the OfS and relevant persons	June 2018
124	The Higher Education and Research Act 2017 (Commencement No. 4) Regulations 2018	Makes various research councils cease to exist and revokes relevant Royal Charters and brings into force minor and consequential provisions	October 2018
10	The Education (Student Fees, Awards and Support etc.)	Makes amendments to various legislation, to include definitions set out in HERA	February 2019

Section	Title	Purpose	Commencement date
	(Amendment) Regulations 2019		
70 119	The Higher Education (Registration Fees) (England) Regulations 2019	Makes clear the provisions for the OfS to charge institutions for their initial/ongoing registration on the register	April 2019
117 119	The Higher Education and Research Act 2017 (Transitional and Saving Provisions) (University Title) Regulations 2018	Makes transitional and savings provisions and provisions in relation to the use of university title	April 2019
116	The Higher Education and Research Act 2017 (Further Implementation etc.) Regulations 2019	Makes provision for the implementation of HERA, setting out amendments to primary and secondary legislation in consequence of the commencement of certain provisions of HERA, including amending schedule 3 to the Charities Act 2011	August 2019
15 21 119	The Higher Education (Monetary Penalties and Refusal to Renew an Access and Participation Plan) (England) Regulations 2019	Makes provisions in relation to the monetary penalties the OfS may charge a provider for breaching registration conditions, fee limits for providers with access and participation plans, and refusal to renew access and participation plans	August 2019
45	The Power to Award Degrees etc. (Grimsby Institute of Further and Higher Education) Order of Council	Grants Grimsby Institute of Further and Higher Education's power to award various awards, which was valid until 31st July 2020	August 2019

Section	Title	Purpose	Commencement date
	2013 (Amendment) Order 2019		
45	The Power to Award Degrees etc. (BPP University Limited) Order of Council 2013 (Amendment) Order 2019	Grants BPP University Limited the power to award varied degrees, extending it until 31st August 2020	September 2019
Revoked	The Education (Student Fees, Awards and Support) (Amendment) (EU Exit) Regulations 2019 (revoked)	These SIs have all been revoked	2019 No. 139
10	The Education (Student Fees, Awards and Support etc.) (Amendment) (No. 2) Regulations 2020	Makes amendments to the Education (Student Fees, Awards and Support etc.) Regulations 2020 due to a defect in that statutory instrument, and amends student finance regulations in a variety of ways	February 2020
124	The Higher Education and Research Act 2017 (Commencement Order No. 6) Regulations 2020	Makes various research councils cease to exist and revokes relevant Royal Charters and brings into force minor and consequential provisions	March 2020
42	The Power to Award Degrees etc. (TEC Partnership) Order 2020	Grants TEC Partnership the power to award foundation degrees for a one- year fixed term expiring on 31st July 2021	August 2020
42	The Power to Award Degrees etc. (Arden University Limited) Order 2020	Grants Arden University the power to award taught awards for a one- year fixed term expiring on 31st August 2021	September 2020

Section	Title	Purpose	Commencement date
45	The Power to Award Degrees etc. (The Ashridge (Bonar Law Memorial) Trust) Order of Council 2014 (Amendment) Order 2020	Grants the Ashridge (Bonar Law Memorial) Trust's (also known as 'Ashridge') existing degree awarding powers to extend their validity to 31st August 2021	September 2020
45	The Power to Award Degrees etc. (BPP University Limited) Order of Council 2013 (Amendment) Order 2020	Grants BPP University Limited's power to award degrees valid for an indefinite period	September 2020
42	The Power to Award Degrees etc. (Regent's University London Limited) Order 2020	Grants the power for Regent's University London Limited to grant taught awards for a fixed term beginning on 29th September 2020 and expiring on 31st August 2024	September 2020
45	The Power to Award Degrees etc. (Warwickshire College) Order of Council 2014 (Amendment) Order 2020	Grants Warwickshire College power to award degrees, so that it expires on 31st August 2021	September 2020
119 Schedule 2	The Higher Education (Fee Limits and Student Support) (England) (Coronavirus) (Revocation) Regulations 2020	Revokes the Higher Education (Fee Limits and Student Support) (England) (Coronavirus) Regulations 2020	November 2020
10	The Education (Student Fees, Awards and Support etc.)	Makes amendments in various legislation in relation to student finance, regarding:	November 2020

Section	Title	Purpose	Commencement date
	(Amendment) (No. 3) Regulations 2020	Old system and part time students who started courses before September 2012 Graduate entry accelerated programmes and veterinary courses Absence from courses Eligibility for persons granted leave to remain as a bereaved partner Residence requirements Disabled students' allowances Payment rates And other minor amendments	
Revoked	The Education (Student Fees, Awards and Support etc.) (Amendment) Regulations 2020	These SIs have all been revoked	2020 No. 46
Revoked	The Higher Education (Fee Limits and Student Support) (England) (Coronavirus) Regulations 2020 (revoked)	These SIs have all been revoked	2020 No. 853
10 119	The Education (Student Fees, Awards and Support) (Amendment) Regulations 2021	Makes amendments to student support regulations consequently because of the UK's withdrawal from the EU	March 2021
70	The Higher Education (Registration Fees) (England) (Amendment) Regulations 2021	Makes a reduction to the registration fees payable by registered HE providers to the OfS	April 2021

Section	Title	Purpose	Commencement date
42	The Power to Award Degrees etc. (Lamda Limited) Order 2021	Grants the power for Lamda Limited to grant taught awards for a fixed term beginning on 1st August 2021 and expiring on 31st October 2024. Lamda Limited may authorise other institutions to grant such awards	August 2021
42 44	The Power to Award Degrees etc. (TEC Partnership) (Amendment) Order 2021	Grants TEC Partnership the power to award existing foundation degree, extending them until 31 st October 2021 and authorises them to grant up to and including bachelor's degree awards for a fixed term beginning on 1st August 2020 and expiring on 31st October 2024	August 2021
10 119	The Education (Student Fees, Awards and Support) (Amendment) (No. 2) Regulations 2021	Makes amendments to the student support regulations to bring them in line with the requirements of the EU Withdrawal Agreement	September 2021
42	The Power to Award Degrees etc. (The London Interdisciplinary School Ltd) Order 2020	Grants The London Interdisciplinary School Ltd with the power to award specified taught awards for a fixed term expiring on 31st December 2024	September 2021
42 44	The Power to Award Degrees etc. (Arden University Limited) (Amendment) Order 2021	Grants Arden University Limited the power to award degrees to an indefinite period commencing on 1st September 2021	September 2021
45	The Power to Award Degrees etc. (Ashridge (Bonar Law Memorial) Trust) Order of Council 2014	Grants Ashridge (Bonar Law Memorial) Trust the power to award degrees for an indefinite period	September 2021

Section	Title	Purpose	Commencement date
	<u>(Amendment) Order 2021</u>		
42	<u>The Power to Award Degrees etc. (Dyson Technical Training Limited) Order 2020</u>	Grants Dyson Technical Training Limited the power to award specified taught awards, for a fixed term ending 30 th November 2024	September 2021
42	<u>The Power to Award Degrees etc. (TEDI-London) Order 2021</u>	Grants TEDI-London the power to award specified taught awards for a fixed term expiring on the 30 th November 2024	September 2021
45	<u>The Power to Award Degrees etc. (Warwickshire College) Order of Council 2014 (Amendment) Order 2021</u>	Grants Warwickshire College's power to award existing foundation degrees as retained for an indefinite period. In addition, it grants Warwickshire College the authorisation to allow other institutions to grant awards on its behalf. Further, Warwickshire College may grant awards up to and including bachelor's degree level awards for a fixed term expiring on 31st December 2024	September 2021
10 119	<u>The Education (Student Fees, Awards and Support) (Amendment) (No. 3) Regulations 2021</u>	Makes amendments to various student support regulations to make a variety of changes, for example, relating to eligibility for certain courses and students and support amounts	December 2021
42 44	<u>The Power to Award Degrees etc. (Dyson Technical Training Limited) (Amendment) Order 2021</u>	Grants Dyson Technical Training Limited the power to award specific taught awards, for a fixed term ending 30 th November 2024	January 2022
45	<u>The Power to Award Degrees etc. (Hull College Group) Order of Council</u>	Varies Hull College Group's power to award degrees, extending it to 31st December 2022	January 2022

Section	Title	Purpose	Commencement date
	2015 (Amendment) Order 2021		
42	The Power to Award Degrees etc. (The London Institute of Banking & Finance) Order 2021	Grants the London Institute of Banking & Finance's power to award degrees for a fixed term beginning on 1st September 2021 and expiring on 31st August 2021	January 2022
42 44	The Power to Award Degrees etc. (The London Interdisciplinary School Ltd) (Amendment) Order 2021	Grants the London Interdisciplinary School the power to award specified taught degrees, until 31st December 2024	January 2022
42	The Power to Award Degrees etc. (College of Legal Practice Limited) Order 2021	Grants the College of Legal Practice Limited to award specified taught awards for a fixed term expiring on 30th April 2025	February 2022
10 119	The Education (Student Fees, Awards and Support) (Amendment) Regulations 2022	Makes amendments to student support regulations in relation to eligibility for those under the Afghan Citizens Resettlement Scheme and the right to recover overpaid fee loans	February 2022
42	The Power to Award Degrees etc. (ICMP Management Limited) Order 2021	Grants the ICMP Management Limited's power to award taught awards for a fixed term expiring on 30th November 2025	September 2022
10 119	The Education (Student Fees, Awards and Support) (Amendment) (No. 2) Regulations 2022	Makes amendments to various student support regulations to make (a) British nationals evacuated or assisted from Afghanistan on courses on or after 1 st August and (b) persons under Ukraine Schemes on new and existing courses from	June 2022

Section	Title	Purpose	Commencement date
		academic year 2022/23, eligible for support	
10 119	The Education (Student Fees, Awards and Support) (Amendment etc.) (EU Exit) Regulations 2020	Makes amendments to student support regulations consequently because of the UK's withdrawal from the EU	In accordance with regulation 1
29 30 32 33 34 119	The Higher Education (Access and Participation Plans) (England) Regulations 2018	Makes various provisions relating to access and participation plans, including in relation to mandatory fee limits, contents of plans and the procedure for approval and review	In accordance with regulation 1
10 119 Schedule 2	The Higher Education (Fee Limits and Fee Limit Condition) (England) Regulations 2018	Makes provisions in relation to fee limits which providers may charge, depending on numerous factors	in accordance with regulation 1
3 119	The Office for Students (Register of English Higher Education Providers) Regulations 2017	Makes provisions in relation to the OfS register and the information it must contain	In accordance with regulation 1(2)
9 39 119	The Higher Education (Transparency Condition and Financial Support) (England) Regulations 2018	Makes various provisions, in relation to the OfS register, registration conditions and payments from OfS to eligible providers	in accordance with regulation 2
119 Schedule 2	The Higher Education (Fee Limits for Accelerated Courses)	Makes provisions in relation to the fees that certain providers can charge for the provision of accelerated courses	In accordance with regulation 1

Section	Title	Purpose	Commencement date
	(England) Regulations 2019		
124	Commencement Order No.4 - 2018 No. 1054 (C. 82)	To revoke the Royal Charters of the bodies mentioned in 109 (1) except for the Medical Research Council and the Science and Technology Facilities Council.	9th October 2018
124	Commencement Order No.6 - 2020 No. 321 (C. 16)	To revoke the Royal Charters of the Science and Technology Facilities Council.	19th March 2020
45	Power to Award Degrees etc. (University College of Estate Management) Order of Council 2018 (Amendment) Order 2022	Provides for a variation so that University College of Estate Management's existing Degree Awarding Powers authorisation remains valid for an indefinite period.	1 st September 2022
42	Power to Award Degrees etc (University for the Creative Arts) Order 2022	Authorises University for the Creative Arts with the power to award research awards for a three-year and three-month fixed term expiring on 30th November 2025.	1 st September 2022
70 119	Higher Education (Registrations Fees) (England) Regulations 2019	Set out the fees which the OfS may charge institutions for their registration in the register of English HE providers.	6 th April 2019
45	Power to Award Degrees etc. (Blackpool and The Fylde College) Order of Council 2016 (Amendment) Order 2022	Provides for a variation so that Blackpool and The Fylde College's existing Degree Awarding Powers authorisation remains valid for an indefinite period.	13 th September 2022
42	Power to Award Degrees etc. (Multiverse	Authorises Multiverse Group Limited with the power to award specified taught awards for a three-year and three-month fixed	1 st September 2022

Section	Title	Purpose	Commencement date
	Group Limited) Order 2022	term expiring on 1st December 2025.	
45	Power to Award Degrees etc. (NCG) Order of Council 2016 (Amendment) Order 2022	Provides for a variation so that NCG's existing Degree Awarding Powers authorisation remain valid until 31st July 2024.	1 st August 2022
42	Power to Award Degrees etc. (Spurgeon's College) Order 2022	Authorises Spurgeon's College with the power to award taught awards for a three-year and three-month fixed term expiring on 1st December 2025.	1 st September 2022
42	Power to Award Degrees etc. (TEC Partnership) Order 2020	Authorises TEC Partnership with the power to grant foundation degree only awards for a one-year fixed term expiring on 31 st July 2021.	1 st August 2020
71	The Higher Education (Investigation Fees) (England) Regulations 2022	Gives the OfS the power to charge other fees for the costs of an investigation where the investigation results in one of several specified outcomes.	8 th December 2022



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