



Department
for Education

Higher Education Restructuring Regime

Guidance for Applicants

December 2020

Contents

Summary	3
About this guidance	3
Expiry or review date	3
Who is this guidance for?	3
Main points	3
Introduction	4
Contacts	4
Interpretation	4
Background	4
Higher Education Restructuring Unit (“HERU”)	5
Confidentiality	5
Application Process	6
Initial Contact	6
Completing the Application Form	6
Triage Stage	7
Documents supporting the application	9
Right to make representations	9
Process following Triage Stage	10
Independent Business Review	10
The Restructuring Plan	10
Funding decision	11
Terms of the loan	11
Monitoring	12
Refusal of funding	12
Appendix 1 – Information & Documentation Supporting An Application	13
Appendix 2 – STEM subjects	15

Summary

About this guidance

This guidance is for higher education providers in England registered with the Office for Students in the approved (fee cap) category facing financial difficulties as a result of coronavirus (COVID-19) and sets out how the HE Restructuring Regime will operate.

Expiry or review date

This is a temporary scheme to respond to the unprecedented financial pressures caused by COVID-19. The HE Restructuring Regime guidance will be kept under review by the Government.

Who is this guidance for?

This guidance is for:

- Higher education providers in England registered with the Office for Students in the approved (fee cap) category.

Main points

This guidance sets out the application and assessment process for the HE Restructuring Regime.

Introduction

Contacts

1. When a case manager is appointed, they will contact you with the contact details for their team. All enquiries relating to the Higher Education Restructuring Regime (“HERR”) in the meantime should be sent, by email, to: HE.Restructuringregime@education.gov.uk.

Interpretation

2. Please note that all references to the 'DfE' throughout this document mean the Secretary of State for Education ("SoS") acting through his representatives in the Department for Education and its agencies.

Background

3. On 16 July 2020, the DfE published the [“Establishment of a Higher Education Restructuring Regime in response to COVID-19”](#) which set out: the rationale for setting up HERR; the purpose and principles for intervention; the policy objectives; and intervention and conditionality for HERR.
4. The overarching principles of the HERR are that DfE will only intervene if:
 - 4.1 There is a clear economic and value for money case for intervention: not all Higher Education Providers (“HEPs”) will be prevented from exiting the market. Any intervention should be a last resort measure after all other finance options have been exhausted, including the Government-backed business support schemes related to COVID-19;
 - 4.2 The problems are related to COVID-19 and there is a clear and sustainable model for future provision as a result of restructuring, meaning that the HEP should not need further assistance; and
 - 4.3 The failure of the HEP would cause significant harm to the national or local economy or society (for example, this could be the loss of high-quality research or teaching provision, a disruption to COVID-19 research or healthcare provision or overall disruption to policy objectives including a significant impact on outcomes for students).
5. The key policy objectives of the HERR are to:
 - 5.1 Protect the welfare of current students;
 - 5.2 Support the role HEPs play in regional and local economies through the provision of high-quality courses aligned with economic and societal need; and
 - 5.3 Preserve the sector’s internationally outstanding science base.
6. To be in scope for consideration, a provider must be registered with the Office for Students (“OfS”) in the Approved (Fee Cap) category but not a Further Education College or Sixth Form College, for which the Education and Skills Funding Agency operates a separate regime.
7. Entry to the HERR is by application only. No HEPs will be invited to enter the HERR.

8. HEPs who are facing financial difficulties should continue to engage with the OfS and must continue to meet the OfS's regulatory requirements.

Higher Education Restructuring Unit (“HERU”)

9. The HERU has been set up to manage the operation of the HERR. The HERU is a unit of DfE.
10. The HERU is staffed by experienced restructuring professionals. Prior to submission of an application, the HERU is available to all HEPs in financial difficulty to discuss and advise them on how the HERR operates.

Confidentiality

11. Applicants and entrants to the HERR will be allocated a project name to protect confidentiality and appropriate measures will be implemented to protect the confidentiality of the information provided by HEPs.
12. All pre-application discussions will be private and subject to the information security afforded to applicants.

Application Process

Initial Contact

13. When an HEP contacts HERU, if they are in scope as set out in paragraph 6, a case manager from HERU will contact the applicant to:
 - 13.1 Discuss the financial challenges facing the applicant and understand how these are linked to the COVID-19 pandemic;
 - 13.2 Understand what other sources of finance have been considered to ensure all commercial, grant financing and other Government-backed support schemes relating to COVID-19 have been explored and applied for if relevant; and
 - 13.3 Discuss the HERR process and agree documentation to be sent to HERU as part of the application process.
14. Following these discussions, the applicant will be able to complete an application form and enter the Triage Stage (see paragraphs 20 to 24).
15. In certain circumstances, such as where the provider has not yet exhausted its commercial options, the HERU may recommend a shadow process, by mutual agreement between the HEP and HERU. Some examples of situations which could result in a shadow process include:
 - 15.1 The applicant is undergoing a review or restructuring process already and it is uncertain that it will need support through the HERR; or
 - 15.2 The applicant is waiting for a funding decision from a bank or granting body.
16. The shadow process will involve calls between the applicant and the case manager to update on progress of funding applications or to track the progress of ongoing review or restructuring processes. If the HEP still wishes to be considered for entry into the HERR, it will be required to complete an application form and formally enter the HERR.
17. Entry into the shadow process will reduce the time required to assess the provider's application for funding as part of the HERR should the provider fail to receive funding through alternative finance options and choose to enter the HERR. It should be noted that entry into the shadow process does not guarantee that funding will be provided and, upon entering the HERR through the shadow process, a provider will be subject to the same assessment criteria as all other providers.

Completing the Application Form

18. Prior to being considered for entry to the HERR, applicants will be required to complete an application form.
19. The Application Form includes questions about the HEP's status and current financing arrangements, the funding requirement and the events leading to it (including the impact of the COVID-19 pandemic on the HEP) and other options and funding sources explored. Information and supporting documentation relating to the matters listed in Appendix 1 – Information & Documentation Supporting An Application may also need to be submitted with the application. A precise list of documents required to accompany an application will be drawn up in initial discussions with the case manager.

Triage Stage

20. The first stage of the HERR involves a preliminary assessment of the HEP and its eligibility for the HERR. This is called the "Triage Stage". At the Triage Stage, the HERU will only exclude applicants where it can be satisfied:
 - 20.1 that the applicant's financial difficulties are not related to the COVID-19 pandemic;
 - 20.2 that the applicant has not exhausted all commercial and other options to meet their funding requirement; or
 - 20.3 on the basis of available evidence, that the failure of the HEP would not cause significant harm to the national or local economy or society, by reference to the impact groups: students; teaching provision; local economy and communities; and research and knowledge exchange, as described in the [16 July 2020 policy paper](#).
21. To assess the impact of failure, HERU will draw on information principally sourced from the Higher Education Statistics Agency ("HESA") based on the most recent publicly available submissions to HESA. DfE recognises that complete information is not available for all potential applicants, particularly those who have recently joined the OfS register and have not reached their cyclical deadline to submit data to HESA. HERU will advise applicants if the information is not complete and may request relevant information. Any applicant may provide up to date information if it is felt that there has been a material change since the most recent submission to HESA and HERU will not exclude an applicant from the HERR at the triage stage without requesting all relevant information.
22. Decisions to approve or refuse an application to the HERR will be confirmed once the case has been considered by the Senior Responsible Officer of the HERR or the SoS.
23. The information assessed at the Triage Stage will include:
 - 23.1 Staff and student numbers and characteristics:
 - 23.1.1 total student numbers;
 - 23.1.2 total staff numbers;
 - 23.1.3 number of non-UK domiciled students;
 - 23.1.4 number of UK domiciled full time undergraduate entrants aged 20 or younger at date of entry from low participation neighbourhoods, i.e. the bottom quintile of the POLAR4 analysis, as a % of the UK domiciled full time undergraduate entrants aged 20 or younger at date of entry population with known participation data;¹
 - 23.1.5 number of students and staff with protected characteristics as a % of the total cohort (other than considered above), which include:
 - 23.1.5.1 female staff and students;
 - 23.1.5.2 BAME staff and students;
 - 23.1.5.3 staff and students known to have a disability;
 - 23.1.5.4 students aged 20 or younger at entry to the applicant as a % of the total student number; and

¹. For guidance on POLAR 4 analysis visit <https://www.officeforstudents.org.uk/data-and-analysis/young-participation-by-area/about-polar-and-adult-he/>

- 23.1.5.5 staff aged 50 and over;
- 23.1.6 number of postgraduate research students;
- 23.1.7 continuation rate (as a percentage) of UK domiciled full-time undergraduate entrants that continue to the second year at the same provider (excluding those that leave before 50 days);
- 23.1.8 number of UK domiciled first degree graduates (as a percentage) who live in the same region (being the former Government Offices for the Regions: East of England, East Midlands, London, North East, North West, South East, South West, West Midlands, Yorkshire and the Humber) as the applicant;² and
- 23.1.9 the rate of high skilled employment of UK domiciled graduates that studied full time. The measure is based on the Destination of Leavers from Higher Education survey identifying graduates who have continued in education or are employed in categories 1 to 3 of the Standard Occupational Classification, which can be found on the Office for National Statistics website. This data may not be required if it is not readily available.
- 23.2 Details of the applicant's provision and operations including details of the number of students studying STEM and ITT (Initial Teacher Training) subjects. STEM subjects are listed in Appendix 2.
- 23.3 Details relating to the community and local economy including the Index of Multiple Deprivation of the local authority district of the applicant's main campus address.
- 23.4 Details relating to research and knowledge exchange activities undertaken by the applicant:
 - 23.4.1 the total research grant and contract income for the year; and
 - 23.4.2 the total income from knowledge exchange activity for the year defined as total income from collaborative research involving public funding; consultancy contracts; facilities and equipment; contract research; CDP/CE; and intellectual property.
- 23.5 "Cold Spot" analysis identifying other providers in the travel to work area of the applicant's main campus address.
- 24. In addition to the information provided with the Application Form, applicants may be required to provide more detailed information to assist the Triage Stage assessment. This may include:
 - 24.1 Further details of the applicant's provision and operations:
 - 24.1.1 Details of faculties including student numbers;
 - 24.1.2 Details of STEM subjects, as defined by HESA, taught by subject including student numbers;
 - 24.1.3 Details of research capacity UKRI Grant and other Grant funding including BEIS' other research funders, including other Government departments
 - 24.1.4 Details of any provision or research which has a particular importance to:

². This data is sourced from Longitudinal Graduate Outcomes ("LEO") data. LEO data may not be readily available to applicants so in cases where HERR does not hold this data, if the applicant cannot source it, it may not be required.

- 24.1.4.1 COVID-19 response and recovery;
 - 24.1.4.2 public sector workforce pipeline;
 - 24.1.4.3 national or regional jobs, skills, and economic growth;

 - 24.1.4.4 the UK's international reputation through world-leading provision or research;
 - 24.1.4.5 the UK's world-class science base;
 - 24.1.4.6 technologies to support net zero carbon emissions; and
 - 24.1.4.7 national security.
- 24.2 Further details of interaction with the community and local economy:
- 24.2.1 Links between the applicant with public or private sector bodies in the local or regional community; and
 - 24.2.2 Involvement of the applicant in any local, regional, or national infrastructure projects.

Documents supporting the application

25. Documentation and information required in support of applications to HERR are included at Appendix 1 – Information & Documentation Supporting An Application.

Right to make representations

26. If DfE is minded to refuse entry to the HERR following the Triage Stage assessment, it will notify the applicant giving reasons explained by reference to entry criteria set out in paragraph 20.
27. Applicants who are notified that HERR is minded to refuse entry may make representations against the decision by emailing their allocated case manager within 14 days of receipt of the notification.
- 27.1 Any representations should address the points set out in the 'minded to refuse' notification, and should, where possible, provide evidence in support. For example, representations or evidence may seek to demonstrate that::
- 27.1.1 Data or information provided has been misinterpreted by HERU in the reasons for refusal; or
 - 27.1.2 Data or information was not held by HERU which presents a materially different position and ought to be considered.
28. Any representations and any further evidence provided will be considered before a final decision is made about entry to the HERR.

Process following Triage Stage

Independent Business Review

29. An independent business review ("IBR"), undertaken by a firm of financial advisers selected by HERU, will be required for all applicants accepted into the HERR following the Triage Stage.
30. Entrants are expected to fund the IBR.
31. The scope of the IBR will be agreed by HERU in conjunction with other interested parties, for example the HEP's existing lenders.
32. The detailed IBR scope will be bespoke to each entrant but will include a review of the following areas:
 - 32.1 short term cash requirement;
 - 32.2 financial review, including:
 - 32.2.1 historic trading performance, balance sheet and cash flows;
 - 32.2.2 existing loans, security, guarantees and other credit support; and
 - 32.2.3 KPIs and peer review.
 - 32.3 operations;
 - 32.4 governance;
 - 32.5 estate and property;
 - 32.6 education provision; and
 - 32.7 forecasts and strategic plan.
33. An IBR is expected to take between six and eight weeks to complete.

The Restructuring Plan

34. Each HEP will need to have a Restructuring Plan ("RP"). The RP should consider all elements set out in the 16 July HERR policy publication and should be tailored and proportionate to the circumstances of the individual HEP. It is up to the HEP to develop the RP and include relevant sections. The key elements to be considered for inclusion are:
 - 34.1 A strategic business case. This should also set out how the plan meets the overarching principles of the HERR set out in paragraph 4 above and the key policy objectives set out in paragraph 5 above;
 - 34.2 A market assessment;
 - 34.3 An operational plan including an education provision plan and a commercial plan;
 - 34.4 A research plan, where appropriate;
 - 34.5 An estates plan;
 - 34.6 A student recruitment plan;
 - 34.7 An organisation and governance plan;
 - 34.8 A financial plan; and

- 34.9 A transition and delivery plan.
35. Any suggested strengthening of governance processes identified during the IBR should also be addressed by the RP.
36. To expedite the agreement of the plan, work on the RP should commence during the IBR.
37. Following the completion of the IBR, discussions will be held between the HEP, HERU and its financial and legal advisers, and other key stakeholders to discuss the findings of the IBR and agree any changes to the RP. In considering the RP, HERU will assess:
- 37.1 Whether the plan delivers against policy objectives;
 - 37.2 Whether the plan delivers long term financial stability;
 - 37.3 Whether the governance arrangements are sufficient to deliver the plan;
 - 37.4 Whether the plan represents value for money, tested in accordance with the Green Book (Central Government Guidance on Appraisal and Evaluation);
 - 37.5 The market impact of the entrant exiting the market; and
 - 37.6 The extent to which any recommendations from the IBR have been reflected in the plan.
38. To be approved, the RP must have a realistic prospect of returning the entrant to operating surplus with a level of debt that can be supported and repayment of the HERR loan within a reasonable time period.

Funding decision

39. A decision as to whether a loan will be offered will be based on:
- 39.1 HERU's assessment of the RP as set out in paragraph 37 above; and
 - 39.2 The setting of milestones against the RP which will form part of the covenant structure to any HERR loan.
40. The SoS will make a decision regarding the loan based on recommendations from officials and independent advice from the HERR Advisory Board.
41. On approval of the SoS, the loan will be referred to the Chief Secretary to the Treasury for final confirmation that funds may be released.

Terms of the loan

42. Funding will be made available by way of loan. The amount, term and repayment profile will be agreed on a case by case basis depending on the HEP's circumstances.
43. Interest will be charged at a rate to be agreed which will be based on Government guidance relating to use of public money.
44. Financial covenants linked to the RP will be included as well as provisions relating to specific milestones, objectives or transactions agreed in the RP.
45. Representations, undertakings and events of default as would be found in a normal commercial loan agreement will also be included.

Monitoring

46. HERU will monitor the loan and performance against covenants and the achievement of the RP until repayment of the loan.

Refusal of funding

47. The SoS decision is final.
48. The HEP should continue to engage with the OfS in line with the regulatory requirements.

Appendix 1 – Information & Documentation Supporting An Application

1. Documentation and information supporting the application must, where applicable include the following information about:
 - 1.1 The applicant:
 - 1.1.1 Contact details of the Vice Chancellor, or equivalent, and of any other individuals that the applicant identifies as key to the process;
 - 1.1.2 Details of the legal structure of the applicant (including its group and affiliated entities), and a copy of governing documents such as memorandum and articles of association, trust deed, charter document or similar as appropriate for each entity;
 - 1.1.3 Confirmation of charitable status where relevant; and
 - 1.2 Third-party borrowing including:
 - 1.2.1 Name of lender(s);
 - 1.2.2 Type (e.g.: loan, revolving credit facility (“RCF”), overdraft, listed debt instrument);
 - 1.2.3 Expiry date of facility;
 - 1.2.4 Amount of loan or limit of overdraft / RCF;
 - 1.2.5 Whether any covenants or terms have been breached;
 - 1.2.6 Details of any security, guarantees or other credit support provided to lenders or other third parties; and
 - 1.2.7 Details of any intercreditor, priority or subordination arrangements.
 - 1.3 Details of the funding requirement, supported by cash flow forecasts, including:
 - 1.3.1 Date on which current resources are forecast to be exhausted;
 - 1.3.2 Peak funding requirement;
 - 1.3.3 Capacity to reduce the requirement or extend the timeframe of the requirement, for example by identifying uncommitted or discretionary spend;
 - 1.3.4 A summary of the events leading to the funding requirement with an explanation of the link between the COVID-19 pandemic and the funding requirement;
 - 1.3.5 Details of use of other Government support schemes introduced in response to COVID-19 pandemic; and
 - 1.3.6 Details of other steps taken to meet the funding requirement through further commercial borrowing, grant applications or other sources.
 - 1.4 Other financial information:
 - 1.4.1 Summary of key elements of the applicant’s strategic plan and forecasts, including a summary of options considered;
 - 1.4.2 Details of any advice from external consultants or professional advisors to date and what support the applicant has had in preparing its plan and forecasts;

- 1.4.3 Latest forecast outturn for the current financial year;
 - 1.4.4 Draft accounts for the financial year ending in academic year 2019/20; and
 - 1.4.5 Where data relating to the financial year ended in academic year 2018/19 is not available through HESA, HERU may request data and accounts for that year.
- 1.5 Details of defined benefit pension schemes available to staff, how many staff are enrolled in them, the contribution rates, and the latest pension deficit data as appropriate.

Appendix 2 – STEM subjects

2. The STEM subjects are as defined by the Science and Technology Committee of the House of Lords and include the following:
 - 2.1 Medicine and Dentistry;
 - 2.2 Subjects allied to Medicine;
 - 2.3 Biological Sciences;
 - 2.4 Veterinary Sciences, Agriculture and related subjects;
 - 2.5 Physical Sciences;
 - 2.6 Mathematical Sciences;
 - 2.7 Engineering;
 - 2.8 Computer Sciences;
 - 2.9 Technologies; and
 - 2.10 Architecture, Building and Planning.



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