

# Higher Education and Research Bill

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## EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for Business, Innovation and Skills, are published separately as Bill 4—EN.

## EUROPEAN CONVENTION ON HUMAN RIGHTS

Secretary Sajid Javid has made the following statement under section 19(1)(a) of the

# Higher Education and Research Bill

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Make provision about higher education and research; and to make provision about alternative payments to students in higher or further education.

E IT ENACTED

- (e) the need to use the OfS's resources in an efficient, effective and economic way, and
  - (f) so far as relevant, the principles of best regulatory practice, including the principles that regulatory activities should be—
    - (i) transparent, accountable, proportionate and consistent, and
    - (ii) targeted only at cases in which action is needed.
- (2) In performing its functions, including its duties under subsection (1), the OfS must have regard to guidance given to it by the Secretary of State.
  - (3) In giving such guidance, the Secretary of State must have regard to the need to protect academic freedom, including, in particular, the freedom of English higher education providers—
    - (a) to determine the content of particular courses and the manner in which they are taught, supervised and assessed,
    - (b) to determine the criteria for the selection, appointment and dismissal of academic staff and apply those criteria in particular cases, and
    - (c) to determine the criteria for the admission of students and apply those criteria in particular cases.
  - (4) The guidance may, in particular, be framed by reference to particular courses of study but it must not relate to—
    - (a) particular parts of courses of study,
    - (b) the content of such courses,
    - (c) the manner in which they are taught, supervised or assessed,
    - (d) the criteria for the selection, appointment or dismissal of academic staff, or how they are applied, or
    - (e) the criteria for the admission of students or how they are applied.
  - (5) Guidance given by the Secretary of State to the OfS which relates to English higher education providers must apply to such providers generally or to a description of such providers.

#### The register of English higher education providers

### 3 The register

- (1) The OfS must establish and maintain a register of English higher education providers (referred to in this Part as “the register”).
- (2) The register may be divided by the OfS into different parts representing such different categories of registration as the OfS may determine.
- (3) The OfS must register an institution in the register (or, where it has been divided into parts, in a particular part of the register) if—
  - (a) its governing body applies for it to be registered in the register (or in that part),
  - (b) it ia5D .00064cb



- (5) The OfS may determine—
  - (a) the form of an application for registration in the register (or in a particular part of the register),
  - (b) the information to be contained in it or provided with it, and
  - (c) the manner in which an application is to be submitted.
- (6) The Secretary of State may by re

## Registration conditions

- 5 The initial and general on going registration conditions
- (1) The OfS must determine and publish—
    - (a) the initial registration conditions, and
    - (b) the general ongoing registration conditions. 5
  - (2) Different conditions may be determined—
    - (a) for different descriptions of provider;
    - (b) for registration in different parts of the register.
  - (3) The OfS may revise the conditions.
  - (4) If the OfS revises the conditions, it must publish them as revised. 10
  - (5) Before determining or revising the conditions, the OfS must, if it appears to it appropriate to do so, consult bodies representing the interests of English higher education providers which appear to the OfS to be concerned.
  - (6) The OfS may, at the time of an institution’s registration or later, decide that a particular general ongoing registration condition is not applicable to it. 15
  - (7) Where the decision is made after the institution’s registration, the OfS must notify the governing body of the institution of its decision.
- 6 The specific ongoing registration conditions
- (1) The OfS may, at the time of an institution’s registration or later, impose such conditions on its registration as the OfS may determine (“the specific ongoing registration conditions”). 20
  - (2) The OfS may at any time vary or remove a specific ongoing registration condition.
  - (3) Before—
    - (a) varying or removing a specific ongoing registration condition on an institution’s registration, or
    - (b) imposing a new specific ongoing registration condition on its registration,
 the OfS must notify the governing body of the institution of its intention to do so. 30
  - (4) The notice must—
    - (a) specify the OfS’s reasons for proposing to take the step in question,
    - (b) specify the period during which the governing body of the institution may make representations about the proposal (“the specified period”), and
    - (c) specify the way in which those representations may be made. 35
  - (5) The specified period must not be less than 28 days beginning with the date on which the notice is received.
  - (6) The OfS must have regard to any representations made by the governing body of the institution during the specified period in deciding whether to take the step in question. 40



- (2) A transparency condition is a condition that requires the governing body of a registered higher education provider to provide to the OfS, and publish, such information as the OfS requests in relation to one or more of the following—
  - (a) the number of applications for admission on to higher education courses that the provider has received;
  - (b) the number of those applications that were received according to—
    - (i) gender,
    - (ii) ethnicity, and
    - (iii) socio-economic background;
  - (c) the number of offers made by the provider in relation to those applications;
  - (d) the number of those offers that were accepted;
  - (e) the number of students who accepted those offers that completed their course with the provider.
- (3) “Prescribed” means prescribed by regulations made by the Secretary of State for the purposes of this section.

#### 10 Mandatory fee limit condition for certain providers

- (1) The OfS must ensure that the ongoing registration conditions of each registered higher education provider of a prescribed description include a fee limit condition.
- (2) In this Part, “a fee limit condition” means a condition that requires the governing body of the provider to secure that regulated course fees do not exceed the fee limit.
- (3) “Regulated course fees” are fees payable to the provider by a qualifying person—
  - (a) in connection with his or her undertaking a qualifying course, and
  - (b) in respect of an academic year applicable to that course which begins at the same time as, or while, the provider is registered in the register.
- (4) A “qualifying person” means a person who—
  - (a) is not an international student, and
  - (b) is within a prescribed description of persons.
- (5) An “international student” means a person who is not within any description of persons prescribed under section 1 of the Education (Fees and Awards) Act 1983 (charging of higher fees in case of students without prescribed connection with the UK) for the purposes of subsection (1) or (2) of that section.
- (6) A “qualifying course” means a course of a prescribed description.
- (7) The power to prescribe descriptions of course under subsection (6) may not be exercised in such a way as to discriminate—
  - (a) in relation to courses of initial teacher training, between different courses on the basis of the subjects in which such training is given, and
  - (b) in relation to other courses, in relation to a particular subject.

- (9) In this section—  
“course” does not include any postgraduate course other than a course of initial teacher training;  
“prescribed” means prescribed by regulations made by the Secretary of State for the purposes of this section. 5
- (10) Schedule 2 contains provision about determining “the fee limit”; see section 77(2) for the meaning of “fees”.
- 11 Duty to publish a list regarding the fee limit condition
- (1) The OfS must publish in each year a list of— 10  
(a) the registered higher education providers who have a fee limit condition as an ongoing registration condition, and  
(b) the fee limits as determined under Schedule 2 in relation to each of those providers for fees in connection with each qualifying course provided by the provider in respect of each relevant academic year.
- (2) A “relevant academic year”, in relation to a qualifying course, is an academic year which is applicable to the course and which is due to start in the calendar year after the calendar year in which the list is published. 15
- (3) The OfS must send a copy of each published list to the Secretary of State who must lay it before Parliament.
- (4) The Secretary of State may by regulations prescribe the date by which a list under this section must be published by the OfS. 20
- 12 Mandatory access and participation plan condition for certain institutions
- (1) This section applies where— 25  
(a) a fee limit condition will be or is one of the ongoing registration conditions of an institution, and  
(b) the governing body of the institution requests the imposition of an access and participation plan condition in order to access the higher fee limits available in respect of the fee limit condition for institutions who have such a plan.
- (2) An access and participation plan condition— 30  
(a) may be an initial registration condition that is applicable to the institution, and  
(b) must be one of its ongoing registration conditions.
- (3) In this Part, “an access and participation plan condition”, in relation to an institution, means a condition requiring that— 35  
(a) there is an access and participation plan in relation to the institution which—  
(i) has been approved by the OfS under section 28 (power to approve an access and participation plan), and  
(ii) is in force, and 40  
(b) the governing body of the institution complies with the general provisions of that plan (within the meaning of section 31).
- (4) A governing body of an institution is not to be regarded as having failed to comply with the requirement mentioned in subsection (3)(b) by reason of its

failure to comply with a general provision of the plan if it shows that it has taken all reasonable steps to comply with the provision.

#### Other registration conditions

#### 13 Other initial and ongoing registration conditions

- (1) The initial or ongoing registration conditions may, in particular, include—
- (a) a condition relating to the quality of, or the standards applied to, the higher education provided by the provider (including requiring the quality to be of a particular level or particular standards to be applied);
  - (b) a public interest governance condition (see section 14);
  - (c) a condition relating to the provider having a student protection plan which has the OfS's approval (including requiring the provider to have such a plan);
  - (d) a condition requiring the payment of a fee charged under section 63(1) (initial fee and annual fee for ongoing registration);
  - (e) a condition requiring the payment of a fee charged under section 27 or 61 (fees charged by designated bodies) or section 61

without placing themselves in jeopardy of losing their jobs or privileges they may have at the provider.

- (8) Before determining or revising the list, the OfS must consult—
  - (a) bodies representing the interests of

- (b) if earlier, when the provider is removed from the register under section 18 (de-registration by the OfS) or section 22 (voluntary de-registration).
- (5) The OfS may vary the excepted purposes or the remedial conditions at any time during the suspension.
- (6) Where it decides to vary the excepted purposes or the remedial conditions, the OfS must notify the governing body of the provider of its decision.
- (7) The notice must specify the excepted purposes, or remedial conditions, as varied.
- (8) Where the excepted purposes are varied, the OfS must update the provider's entry in the register with the excepted purposes (as varied).
- (9) Where the suspension of a provider's registration ends, the OfS must enter the date on which it ends in the provider's entry in the register.

#### 17 Suspension: procedure

- (1) Before suspending a registered higher education provider's registration under section 16, the OfS must notify the governing body of the provider of its intention to do so.
- (2) The notice must—
  - (a) specify the OfS's reasons for proposing to suspend the registration,
  - (b) specify the proposed excepted purposes and the proposed remedial conditions (if any),
  - (c) specify the period during which the governing body of the provider may make representations about the proposal ("the specified period"), and
  - (d) specify the way in which those representations may be made.
- (3) The specified period must not be less than 28 days beginning with the date on which the notice is received.
- (4) The OfS must have regard to any representations made by the governing body of the provider during the specified period in deciding whether to suspend its registration.
- (5) Having decided whether or not to suspend the provider's registration, the OfS must notify the governing body of the provider of its decision.
- (6) Where the decision is to suspend the provider's registration, the notice must—
  - (a) specify the date on which the suspension takes effect,
  - (b) specify the excepted purposes,
  - (c) specify the remedial conditions (if any), and
  - (d) contain information as to the grounds for the suspension.
- (7) The OfS may vary the date specified under subsection (6)(a) at any time before that date by notifying the governing body of the provider.
- (8) Subsections (1) to (7) do not apply where the OfS considers that a suspension should take effect immediately because there is an urgent need to protect public money, including, in particular, payments made under—



(b) section 22 of the Teaching and Higher Education Act 1998 (financial support for students).

(9) In such a case—

(a) the OfS must notify the governing body of the provider of its decision to suspend the provider's registration, and

(b) that notice must comply with the requirements of subsection (6).

## 18 De-registration by the OfS

(1) The OfS must remove a registered higher education provider from the register if the OfS becomes aware that the provider no longer is, or intends to become, an English higher education provider.

(2) The OfS may remove a registered higher education provider from the register if condition A or B is satisfied.

(3) Condition A is satisfied if—

(a) the OfS has previously exercised its powers under section 15 (monetary penalties) or section 16 (suspension) in relation to breach of one of the provider's ongoing registration conditions, and

(b) it appears to the OfS that—

(i) there is again a breach, or a continuing breach, of that condition, or

(ii) there is or has been a breach of a different one of the provider's ongoing registration conditions.

(4) Condition B is satisfied if it appears to the OfS that—

(a) there is or has been a breach of one of the provider's ongoing registration conditions, and

(b) its powers under section 15 and 16 are insufficient to deal with the failure.

(5) The OfS may make transitional or saving provision in connection with the removal of a provider from the register under this section.

(6) That provision may include treating the provider as a registered higher education provider for such purposes as the OfS may specify.

(7) The OfS must—

- (a) specify the OfS's reasons for proposing to remove the provider from the register,
  - (b) specify the period during which the governing body of the provider may make representations about the proposal ("the specified period"), and
  - (c) specify the way in which those representations may be made.
- (3) The specified period must not be less than 28 days beginning with the date on which the notice is received.
- (4) The OfS must have regard to any representations made by the governing body of the provider during the specified period in deciding whether to remove it from the register.
- (5) Having decided whether or not to remove the provider from the register, the OfS must notify the governing body of the provider of its decision.
- (6) Where the decision is to remove the provider from the register, the notice must specify the date on which the removal takes effect.
- (7) The notice must also contain information as to—
  - (a) the grounds for the removal,
  - (b) rights of appeal, and
  - (c) the period within which an appeal may be made.
- (8) The OfS may vary the date specified under subsection (6) at any time before that date by notifying the governing body of the provider.
- (9) A removal under section 18 may not take effect at any time when an appeal

- (b) it appears to the OfS that there is or has been a failure by the governing body of the provider to comply with—
  - (i) the requirement of that condition mentioned in section 12(3)(b) (failure to comply with general provisions of access and participation plan), or
  - (ii) a fee limit condition which is one of its ongoing registration conditions.
- (2) The OfS may notify the governing body of the provider that, on the expiry of the access and participation plan in relation to the provider which is currently in force, it will refuse to approve a new plan under section 28 during such period as the OfS may specify in the notice.
- (3) The Secretary of State may by regulations make provision about—
  - (a) matters to which the OfS must, or must not, have regard in exercising its powers under subsection (2);
  - (b) the procedure to be followed in connection with the giving of notification under subsection (2);
  - (c) the effect of such a notification.
- (4) The regulations must include provision—
  - (a) requiring any decision of the OfS under subsection (2) affecting the governing body of a provider to have effect in the first instance as a provisional decision,

- (3) The OfS must notify the governing body of the provider of the date on which the provider is removed from the register (“the removal date”).
- (4) The OfS may vary the removal date at any time before that date by notifying the governing body of the provider.
- (5) The OfS may make transitional or saving provision in connection with the removal of a provider from the register under this section.
- (6) That provision may include treating the provider as a registered higher education provider for such purposes as the OfS may specify.
- (7) The OfS must—
  - (a) maintain a list of providers removed from the register under this section,
  - (b) include in that list the details of any provision made under subsection (5), and
  - (c) make the list publicly available by such means as it considers appropriate.

#### Quality and standards

#### 23 Assessing the quality and standards of higher education

- (1) The OfS may assess, or make arrangements for the assessment of, the quality of, and the standards applied to, higher education provided by English higher education providers.
- (2) But the OfS must assess, or make arrangements for the assessment of, the quality of, and the standards applied to, higher education provided by—
  - (a) institutions who have applied to be registered in the register for the purposes of determining whether they satisfy any initial registration condition applicable to them relating to the quality of, or standards applied to, higher education provided by them (see section 13(1)(a)), and
  - (b) registered higher education providers for the purposes of determining whether they satisfy any ongoing registration condition of theirs relating to the quality of, or standards applied to, higher education provided by them (see section 13(1)(a)).

- (4) The majority of the members of the Committee must be individuals who appear to the OfS to have experience of providing higher education on behalf of an English higher education provider or being responsible for the provision of higher education by such a provider.
- (5) In appointing members of the Committee who meet those criteria, the OfS must have regard to the desirability of their being currently engaged at the time of their appointment in the provision of higher education or in being responsible for such provision.
- (6) The majority of the members of the Committee must be individuals who are not members of the OfS.
- (7) Schedule 1 applies to the Quality Assessment Committee as it applies to committees established under paragraph 8 of that Schedule.

## 25 Rating the quality and standards of higher education



- (a) a statement of the amount of the fees which it charges under this section and the basis on which they are calculated, and
  - (b) revised statements where the amount of the fees or the basis on which they are calculated changes.
- (9) In this section, “the general functions” of a designated body are its functions under section 26(4) or paragraph 8(1) of Schedule 4 (duty to provide information and an annual report).

Access and participation

- (3) In this section—
- “the applicable sub-level amount” in relation to an institution means the amount determined from time to time under paragraph 2 of Schedule 2 as the sub-level amount applicable to that institution;
  - “high level quality rating” has the same meaning as in that paragraph;
  - “the higher amount” means the amount from time to time prescribed as the higher amount under that paragraph;
  - “qualifying course” and “qualifying person” have the same meaning as in section 10;
  - “relevant academic year”, in relation to a qualifying course, is an academic year—
    - (a) which is applicable to the course,
    - (b) in respect of which fees are payable to the institution, and
    - (c) which begins when the plan comes into force or while it is in force.

### 31 Content of a plan: equality of opportunity

- (1) An access and participation plan relating to an institution—
- (a) must also include such provisions relating to the promotion of equality of opportunity as are required by regulations made by the Secretary of State to be included in the plan, and
  - (b) may also include further provisions relating to the promotion of equality of opportunity.
- (2) In this section, any reference to the “general provisions” of an access and participation plan is a reference to the provisions included in the plan by virtue of subsection (1).
- (3) The general provisions that may be required by regulations made under subsection (1) include, in particular, provisions—
- (a) requiring the governing body of the institution to take, or secure the taking of, measures to attract applications from prospective students who are members of groups which, at the time when the plan is approved, are under-represented in higher education,
  - (b) requiring the governing body of the institution to provide, or secure the provision of, financial assistance to students,
  - (c) requiring the governing body of the institution to make available to students and prospective students information about financial assistance available to students from any source,
  - (d) setting out objectives relating to the promotion of equality of opportunity,
  - (e) relating to the monitoring by the governing body of the institution of—



- (b) to include any provision relating to the criteria for the admission of students.
- (5) In this section—

- (b) to determine the criteria for the selection, appointment and dismissal of academic staff and apply those criteria in particular cases, and
  - (c) to determine the criteria for the admission of students and apply those criteria in particular cases.
- (2) For the purposes of this section, the OfS's "access and participation functions" are the functions conferred on it by or under—
  - (a) section 21 (refusal to renew an access and participation plan), and
  - (b) sections 28 to 33 (access and participation plans).

### 36 Power of Secretary of State to require a report

- (1) The Secretary of State may, by direction, require the OfS to report to the Secretary of State—
  - (a) in its annual report under paragraph 13 of Schedule 1, or
  - (b) in a special report,

- (a) to which the provider's governing body propose to pay, with the consent of the OfS, all or some of the payments made to it under subsection (1), and
  - (b) which the OfS is satisfied has a sufficient connection with the provider for the purposes of that subsection.
- (5) "School" has the same meaning as in the Education Act 1996 (see section 4 of that Act).
- (6) See section 39 regarding the terms and conditions of financial support under this section.

### 38 Financial support for certain institutions

- (1) The OfS may make grants, loans or other payments to any person in respect of expenditure incurred, or to be incurred, by the person for the purposes of the provision of eligible higher education courses by—
- (a) institutions in England maintained or assisted by local authorities in England or Wales, or
  - (b) English further education providers.
- (2) "Eligible higher education course" means a higher education course prescribed by regulations made by the Secretary of State for the purposes of subsection (1).
- (3) In subsection (1)(a)—
- (a) an institution "assisted" by a local authority has the same meaning as in the Education Act 1996 (see section 579(5) to (a)(in )5.a 6 .04t(e) t)n gts made t350016erdc



- (a) the courses of study or programmes of supervised research, and the assessments, which are appropriate for the grant of an authorised taught award, research award or foundation degree, and

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- (c) power to grant honorary foundation degrees of any description, or specified honorary foundation degrees, or honorary foundation degrees of a specified description, and
- (d) power to grant foundation degrees of any description, or specified foundation degrees, or foundation degrees of a specified description, to members of the academic or other staff of the provider. 5
- (4) In the case of an authorised taught award, research award or foundation degree granted jointly with another institution, the power to deprive mentioned in subsection (2)(b) and (3)(b) is only exercisable jointly with that institution. 10
- (5) In this section, “authorised” and “specified” have the same meaning as in section 40.
- 42 Variation or revocation of section 40 authorisation
- (1) The OfS may, at any time, by a further order under section 40(1), vary or revoke an authorisation given by a previous order under that provision. 15
- (2) That is the case even if the authorisation was given for an indefinite period.
- (3) The OfS may, in particular, make such an order revoking an authorisation if the provider ceases to be a registered higher education provider.
- 43 Variation or revocation of other authorisations to grant degrees etc
- (1) The OfS may by order vary or revoke an authorisation given to an English higher education provider or an English further education provider— 20
- (a) by or under an Act of Parliament, other than under section 40(1) of this Act, or
- (b) by Royal Charter,
- to grant taught awards, research awards or foundation degrees. 25
- (2) That is the case even if the authorisation was given for an indefinite period.
- (3) An order under subsection (1) varying an authorisation may only make such provision as could be made by an order giving authorisation under section 40(1).
- (4) The OfS may, in particular, make an order under subsection (1) revoking an authorisation if the provider is not a registered higher education provider. 30
- (5) The OfS’s power to make an order under subsection (1) is exercisable by statutory instrument; and the Statutory Instruments Act 1946 is to apply to such an instrument as if the order had been made by a Minister of the Crown.
- (6) An order under subsection (1) may make incidental, supplementary, transitional or saving provision. 35
- (7) Any power to vary or revoke an authorisation mentioned in subsection (1), which is a power which exists immediately before the coming into force of this section, ceases to exist on that coming into force.
- 44 Variation or revocation of authorisation: procedure 40
- (1) Before—

- (a) making a further order under section 40(1) varying or revoking a provider's authorisation, or
  - (b) making an order under section 43(1) varying or revoking a provider's authorisation,
- the OfS must notify the governing body of





- (b) such of those validation arrangements as are specified in the regulations or are of a description so specified.
- (5) Regulations under subsection (1) may include power for the OfS to deprive a person of a taught award or foundation degree granted by or on behalf of the OfS under validation arrangements.
- (6) In this section “validation arrangements” means arrangements between the OfS and a registered higher education provider under which the OfS—
  - (a) grants a taught award or a foundation degree to a person who is a student at the provider, or
  - (b) authorises the provider to grant a taught award or a foundation degree on behalf of the OfS.
- (7) Validation arrangements may provide for—
  - (a) the grant of a taught award or a foundation degree by the OfS, or

	behalf in the granting of that award where the grant of that award by that other body on its behalf is authorised by—	
	(i) the authorisation mentioned in paragraph (za), or	
	(ii) regulations under section 47(1) of the 2016 Act;”.	
(3)	In subsection (2)(a), after “Act of Parliament” insert “(other than section 40(1), 43(1) or 47(1) of the 2016 Act)”.	5
(4)	In subsection (2)(c), for “Secretary of State” substitute “appropriate authority”.	
(5)	After subsection (9) insert—	
	“(9ZA) For the purposes of this section as it extends to England and Wales, “the appropriate authority” means—	10
	(a) so far as the power to make an order under subsection (2)(c) is exercisable in relation to England, the Office for Students, and	
	(b) so far as the power to make an order under that provision is exercisable in relation to Wales, the Welsh Ministers.”	
(6)	In subsection (9A)—	15
	(a) for “and section 215 as they extend” substitute “as it extends”, and	
	(b) for “the reference to the Secretary of State is to be read as a reference to” substitute ““the appropriate authority” means”.	
50	Unrecognised degrees: supplementary	
(1)	Section 215 of the Education Reform Act 1988 (“the 1988 Act”) (unrecognised degrees: enforcement) is amended in accordance with subsections (2) and (3).	20
(2)	In subsection (1)—	
	(a) for “Secretary of State” substitute “appropriate authority”,	
	(b) for “him” substitute “the appropriate authority”, and	
	(c) for “he” substitute “the appropriate authority”.	25
(3)	After subsection (1A) insert—	
	“(1B) “The appropriate authority” means—	
	(a) in the case of a weights and measures authority in England, the Secretary of State,	
	(b) in the case of a weights and measures authority in Wales, the Welsh Ministers, and	30
	(c) in the case of a weights and measures authority in Scotland, the Scottish Ministers.”	
(4)	Section 216 of the 1988 Act (identification of bodies granting or providing courses for recognised awards) is amended in accordance with subsections (5) to (10).	35
(5)	In subsections (1) and (2)—	
	(a) for “Secretary of State” substitute “appropriate authority”, and	
	(b) for “him” substitute “the authority”.	
(6)	After subsection (2) insert—	40
	“(2ZA) For the purposes of this section as it extends to England and Wales, “the appropriate authority” means—	

- (a) so far as the functions in question are exercisable in relation to England, the Office for Students, and
  - (b) so far as the functions in question are exercisable in relation to Wales, the Welsh Ministers.”
- (7) In subsection (2A), for “the references in subsections (1) and (2) above to the Secretary of State are to be read as references to” substitute ““the appropriate authority” means”.
- (8) In subsection (3)—
  - (a) in the opening words for “either” substitute “it”, and
  - (b) before paragraph (a) insert—
    - “(za) provides any course which is—
      - (i) in preparation for a degree to be granted by a recognised body falling within paragraph (za) or (zb) of section 214(2) which the recognised body is authorised to grant by the authorisation or regulations mentioned in that paragraph, and
      - (ii) is approved by or on behalf of that recognised body where that approval is authorised by that authorisation or those regulations;”.
- (9) In subsection (3)(a), after “a recognised body” insert “falling within paragraph (a) or (b) of section 214(2)”.
- (10) In subsection (4), for “214(2)(a)” substitute “214(2)(za), (zb), (a)”.
- (11) Section 232 of the 1988 Act (orders and regulations) is amended in accordance with subsections (12) and (13).
- (12) After subsection (4), insert—

“(4A) The power of the Office for Students to make an order under section 214 or 216 is exercisable by statutory instrument; and the Statutory Instruments Act 1946 is to apply to such an instrument as if the order had been made by a Minister of the Crown.”
- (13) In subsection (5), after “fit” insert “or, in the case of orders under section 214 or 216 made by the Office for Students, the Office for Students thinks fit”.
- (14) The amendments made by section 49 or this section to section 214 or 216 of the 1988 Act do not affect the continuing validity of any orders made by the Secretary of State under section 214 or 216 of the 1988 Act before the coming into force of this section.
- (15) Such orders made by the Secretary of State under section 214 or 216 of the 1988 Act have effect after the coming into force of this section as if made by the OfS under section 214 or 216 of the 1988 Act.
- (16) The power in section 217(2) of the 1988 Act may be exercised so as to extend to

## Powers in relation to “university” title

## 51 Use of “university” in title of institution

(1) Section 77 of the Further and Higher Education Act 1992 (use of “university” in title of institution) is amended as follows.

(2) Before subsection (1) insert—

“(A1) Where—

(a) power is conferred by any enactment or instrument to change the name of any educational institution or any body corporate carrying on such an institution,

(b) the educational institution is a registered higher education provider, and

(c) the power is exercisable with the consent of the Privy Council, then, the power may be exercised so as to include the word “university” in the name of the institution and, if it is carried on by a body corporate, in the name of the body, but only if the Office for Students (instead of the Privy Council) consents to that exercise of the power.”

(3) In subsection (1)—

(a) in paragraph (b), after “institution” insert “is in Wales and”, and



- (11) The amendments made by this section do not affect the continuing validity of any approvals given by the Privy Council under section 39 of the Teaching and Higher Education Act 1992 before the coming into force of this section.

### 53 Revocation of authorisation to use “university” title

- (1) The OfS may by order revoke any authorisation, consent or other approval given by or by virtue of—
- (a) an Act (other than the Companies Act 2006), or
  - (b) a Royal Charter,
- to an institution in England and to include the word “university” in its name.
- (2) That is the case even if the authorisation, consent or other approval was granted for an indefinite period.
- (3) The OfS may, in particular, make an order under subsection (1) if—
- (a) in the case of approval or consent given by it under section 77 of the Further and Higher Education Act 1992 or section 39 of the Teaching and Higher Education Act 1998, the institution ceases to be a registered higher education provider, or
  - (b) in any other case, the institution is not a registered higher education provider.
- (4) The OfS’s power to make an order under subsection (1) is exercisable by statutory instrument; and the Statutory Instruments Act 1946 is to apply to such an instrument as if the order had been made by a Minister of the Crown.
- (5) An order under subsection (1) may make incidental, supplementary, transitional or saving provision.
- (6) Any power to revoke an authorisation, consent or other approval mentioned in subsection (1), which is a power which exists immediately before the coming into force of this section, ceases to exist on that coming into force.

### 54 Revocation of authorisation: procedure

- (1) Before making an order under section 53(1) revoking the authorisation, consent or other approval given to an institution to include the word “university” in its name, the OfS must notify the governing body of the institution of its intention to do so.
- (2) The notice must—

(5)	Having decided whether or not to take the step in question, the OfS must notify the governing body of the institution of its decision.	
(6)	If the OfS decides to revoke the authorisation, consent or other approval given to an institution to include the word “university” in its name, the order under section 53(1) must specify the date when the revocation takes effect.	5
(7)	The notice must also contain information as to— (a) the rights of appeal, and (b) the period within which an appeal may be made.	
(8)	The revocation may not take effect at any time when an appeal could be brought against the decision to revoke the authorisation, consent or other approval, or such an appeal is pending.	10
(9)	But that does not prevent the revocation taking effect if the governing body of the institution notifies the OfS that it does not intend to appeal.	
55	Appeals against revocation of authorisation	
(1)	The governing body of an institution may appeal to the First-tier Tribunal against a decision of the OfS to revoke, by an order under section 53(1), an authorisation, consent or other approval given to the institution to include the word “university” in its name.	15
(2)	An appeal may be on the grounds— (a) that the decision was based on an error of fact; (b) that the decision was wrong in law; (c) that the decision was unreasonable.	20
(3)	On an appeal, the Tribunal may— (a) withdraw the decision; (b) confirm the decision; (c) remit the decision whether to confirm the decision, or any matter relating to that decision, to the OfS.	25
Powers of entry and search		
56	Entering and searching premises with a warrant	
(1)	Schedule 5 makes provision about powers to enter and search premises in England occupied by supported higher education providers.	30
(2)	“Supported higher education provider ” means a registered higher education provider which— (a) is funded wholly or partly by a grant, loan or other payment from the OfS under section 37 or 38 (financial support for providers), or (b) provides higher education courses which are designated for the purposes of section 22 of the Teaching and Higher Education Act 1998 (financial support for students) by or under regulations made under that section.	35

## Information powers

- 57 Power to require information from unregistered providers
- (1) The OfS may by notice require the governing body of an unregistered provider to provide the OfS with such information for the purposes of the performance of the OfS's functions as the OfS requests in the notice. 5
  - (2) A notice under subsection (1) may require the information to be provided—
    - (a) by a time specified in the notice, and
    - (b) in a form and manner specified in the notice.
  - (3) If a governing body fails to comply with a notice under subsection (1) and does not satisfy the OfS that it is unable to provide the information, the OfS may enforce the duty to comply with the notice in civil proceedings for an injunction. 10
  - (4) "An unregistered provider" is an English higher education provider which is not a registered higher education provider.
  - (5) See section 8(1)(b) for the ongoing registration condition of a registered higher education provider to provide information to the OfS. 15
- 58 Cooperation and information sharing by OfS
- (1) The OfS—
    - (a) may cooperate with any person where it considers it appropriate to do so for the efficient performance of a function of the OfS, and 20
    - (b) must cooperate with a person in the performance of such a function if required to do so by the Secretary of State.
  - (2) The OfS—
    - (a) may cooperate with a relevant person where it considers it appropriate to do so for the efficient performance of a relevant function of the relevant person, and 25
    - (b) must cooperate with a relevant person in the performance of such a function if required to do so by the Secretary of State.
  - (3) The OfS may provide information to any person if the disclosure is made for the purposes of the performance of a function of the OfS. 30
  - (4) The OfS may provide information to a relevant person if the disclosure is made for the purposes of the performance of a relevant function of the relevant person.
  - (5) Provision of information by the OfS which is authorised by this section does not breach—
    - (a) an obligation of confidence owed by the OfS, or
    - (b) any other restriction on the provision of information (however imposed). 35
  - (6) But nothing in this section authorises the OfS to provide information where doing so contravenes the Data Protection Act 1998. 40
  - (7) In this section—
 

"relevant person" means—



- (a) the Privy Council, or
- (b) a person prescribed by regulations made by the Secretary of State;

“relevant function” means—

- (a) in relation to the Privy Council, any of its functions;
- (b) in relation to any other relevant person, a function prescribed by regulations made by the Secretary of State.

- (8) Regulations under this section prescribing functions of a relevant person may prescribe all of the person’s functions.

### Publication of information

#### 59 Duty to publish English higher education information

- (1) The relevant body must publish, or arrange for the publication of, such information relating to higher education courses provided in England by registered higher education providers as the OfS considers appropriate.
- (2) In this section “the relevant body” means—
  - (a) the designated body (see section 60), or
  - (b) if there is no such body, the OfS.
- (3) The information must be published—
  - (a) at times that the OfS considers appropriate, and
  - (b) at least once a year.
- (4) The information must be published in a form and manner that the OfS considers appropriate.
- (5) When determining what information should be published, and when and how it should be published, the OfS must in particular consider what would be helpful to—
  - (a) students on higher education courses provided in England by registered higher education providers;
  - (b) people thinking about undertaking such courses;
  - (c) registered higher education providers.
- (6) The OfS must from time to time consult the following about the matters described in subsection (5)—
  - (a) a number of registered higher education providers that, taken together, appear to the OfS to comprise a broad range of the different types of such providers,
  - (b) a number of persons that, taken together, appear to the OfS to represent, or promote the interests of, a broad range of students on higher education courses provided in England by registered higher education providers,
  - (c) a number of persons that, taken together, appear to the OfS to represent, or promote the interests of, a broad range of employers of graduates, and
  - (d) such other persons as the OfS considers appropriate.





(e) about notification of institutions of the fees payable, when they are

65 Costs recovery

- (1) The OfS may, by notice, require the governing body of a provider in relation to which a sanction has been imposed to pay the costs incurred by the OfS in relation to imposing the sanction up to the date of notification.
- (2) The references in subsection (1) to imposing a sanction are to—
  - (a) imposing a monetary penalty under section 15;
  - (b) suspending a provider's registration under section 16;
  - (c) removing a provider from the register under section 18.
- (3) "Costs" includes, in particular, investigation costs, administration costs and costs of obtaining expert advice (including legal advice).
- (4) "The date of notification" means the date on which the OfS notified the provider of its decision—
  - (a) in the case of a monetary penalty, under paragraph 2(5) of Schedule 3;
  - (b) in the case of suspension, under section 17(5);
  - (c) in the case of removal,

- (a) they are requirements to be met before financial support of a specified amount or of a specified description is given by the OfS in respect of activities carried on by an institution, and
  - (b) they apply to every institution, or every institution within a specified description, in respect of whose activities that support may be provided.
- (6) The terms and conditions under subsection (1) may, in particular—
- (a) enable the Secretary of State to require the repayment, in whole or in part, of sums paid by the Secretary of State if any of the terms and conditions subject to which the sums were paid is not complied with, and
  - (b) require the payment of interest in respect of any period during which a sum due to the Secretary of State in accordance with any of the terms and conditions remains unpaid.
- (7) In this section “specified” means specified in the terms and conditions.

#### Regulatory framework

#### 67 Regulatory framework

- (1) The OfS must, from time to time, prepare and publish a regulatory framework.
- (2) The OfS must have regard to it when exercising its functions.
- (3) The regulatory framework is to consist of—
  - (a) a statement of how it intends to perform its functions, and
  - (b) guidance for registered higher education providers on the general ongoing registration conditions.
- (4) The statement under subsection (3)(a) must set out how the OfS intends to perform its functions in relation to a registered higher education provider in proportion to the OfS’s assessment of the regulatory risk posed by the provider.
- (5) “Regulatory risk” means the risk of a breach of the provider’s ongoing registration conditions.
- (6) Guidance under subsection (3)(b) must include guidance for the purpose of helping to determine whether or not

- (c) such other persons as it considers appropriate.
- (9) Where a regulatory framework is published, the OfS must send a copy of it to the Secretary of State who must lay it before Parliament.
- (10) In this section, “academic year” means a period of 12 months beginning on 1 August.

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### Supplementary functions

#### 68 Secretary of State’s power to confer supplementary functions

- (1) The Secretary of State may by regulations confer on the OfS such supplementary functions relating to higher education as the Secretary of State considers appropriate. 10
- (2) A “supplementary function” is a function which—
  - (a) is exercisable for the purposes of—
    - (i) the performance by the Secretary of State of the Secretary of State’s functions under primary or secondary legislation, or
    - (ii) the doing by the Secretary of State of anything the Secretary of State has power to do apart from such legislation, and 15
  - (b) relates to, or to the activities of, an institution in England which provides, or may provide, higher education.
- (3) Subsection (4) applies where—
  - (a) any land or other property is or was used or held for the purposes of an institution, and 20
  - (b) the Secretary of State is entitled to any right or interest in respect of the property, or would be so entitled on the occurrence of any event.
- (4) If the institution is an English higher education provider—
  - (a) the Secretary of State may direct that all or any of the Secretary of State’s functions in respect of the property are to be exercisable on the Secretary of State’s behalf by the OfS, and 25
  - (b) the functions are to be so exercised in accordance with such directions as the Secretary of State may give.
- (5) This section does not affect any other powers to confer functions on, or delegate functions to, the OfS. 30

### Directions

#### 69 Secretary of State’s power to give directions

- (1) The Secretary of State may by regulations give the OfS general directions about the performance of any of its functions. 35
- (2) In giving such directions, the Secretary of State must have regard to the need to protect academic freedom, including, in particular, the freedom of institutions—
  - (a) to determine the content of particular courses and the manner in which they are taught, supervised or assessed, 40





- (a) applying for admission on to higher education courses provided by English higher education providers (including predicted grades),
    - (b) offers and rejections regarding which individuals are admitted on to those courses, or
    - (c) the acceptance of such offers. 5
  - (4) “Qualifying research” means—
    - (a) research into the choices available to individuals who are—
      - (i) applying for admission on to higher education courses provided by English higher education providers, or
      - (ii) considering whether to accept an offer for admission on such a course from such a provider; 10
    - (b) research into equality of opportunity;
    - (c) research into any other topic approved by the Secretary of State.
  - (5) The notice under subsection (1) may require the information to be provided—
    - (a) by a time specified in the notice, and 15
    - (b) in a form and manner specified in the notice.
  - (6) If a body fails to comply with a notice under subsection (1) and does not satisfy the Secretary of State that it is unable to provide the information, the Secretary of State may enforce the duty to comply with the notice in civil proceedings for an injunction or (in Scotland) an interdict. 20
  - (7) In this section, “equality of opportunity” means equality of opportunity in connection with access to and participation in higher education provided by English higher education providers.
  - (8) See section 72 regarding the use of information obtained under this section.
- 72 Use of application-to-acceptance data for research purposes 25
- (1) The Secretary of State may—
    - (a) use information obtained under section 71 for use for qualifying research, and
    - (b) provide information obtained under section 71 to an approved person for use for qualifying research. 30
  - (2) The Secretary of State or an approved person may publish the product of research conducted using information obtained under section 71 so long as—
    - (a) a purpose of the Secretary of State or the approved person in publishing it is to provide statistical information,
    - (b) no individual to whom the information obtained under section 71 relates may be identified from the publication, and 35
    - (c) the publication does not include information obtained under section 71 that may be regarded as commercially sensitive.
  - (3) “Approved person” means—
    - (a) a body approved by the Secretary of State for the purposes of this section that uses or disseminates information for the purpose of research (“an approved body”), or 40
    - (b) an individual approved by the Secretary of State or an approved body for the purposes of this section (“an approved researcher”).



- (4) In this Part references to an institution in a part of the United Kingdom are to an institution whose activities are carried on, or principally

“registered higher education provider ” has the meaning given by section 3(10);

“registration” has the meaning given by section 3(10);

“research award” has the meaning given by section 40(3);

- (a) for a recipient of an alternative payment (an “AP recipient”) to be required to make, in such manner, at such times, and to such

(d) after paragraph (e) insert—

- (2) In section 23(7)(a)(i) of the Teaching and Higher Education Act 1998 (functions in respect of which payments are to be made) for “or loans” substitute “, loans or alternative payments”.
- (3) In section 24 of that Act (supply of information in connection with student

- (b) after paragraph (d), insert—
- “(da) a registered higher education provider as defined by section 77 of the 2016 Act (other than one within paragraph (a), (b), (c) or (d) of this section);”, and
- (c) in paragraph (f), after “the 1992 Act” insert “or section 40 of the 2016 Act”. 5
- (3) After section 20 insert—
- “20A Institutions in England that cease to be qualifying institutions
- (1) An institution in England that ceases to be a qualifying institution is a “transitional institution” during the shorter of— 10
- (a) the period of 12 months beginning with the day on which it ceases to be a qualifying institution, and
- (b) the period beginning with that day and ending when it becomes a qualifying institution again,
- (and the shorter period is referred to in this section as “the transitional period”). 15
- (2) For the purposes of this Part, a transitional institution is to be treated as continuing to be a qualifying institution in England during the transitional period, subject to subsection (3).
- (3) A complaint is not a qualifying complaint to the extent that it is about an act or omission of a transitional institution which occurred on or after the day on which the transitional period began. 20
- (4) In section 12(3) (power of designated operator to determine when certain complaints are qualifying complaints), the reference to a qualifying institution within paragraph (e) or (f) of section 11 includes a transitional institution that was a qualifying institution within either of those paragraphs immediately before the beginning of the transitional period.” 25
- (4) In section 21 (interpretation of Part 2)—
- (a) number the existing text as subsection (1), 30
- (b) in that subsection, omit the definition of “governing body”,
- (c) in that subsection, after the definition of “higher education corporation” insert—
- ““institution” includes a training provider in England who would not otherwise be regarded as an institution;”, 35
- (d) in that subsection, at the end insert—
- ““training provider” means a person who provides training for members of the school workforce within the meaning of Part 3 of the Education Act 2005 (see section 100 of that Act).”, and 40
- (e) after that subsection insert—
- “(2) In this Part “governing body”—
- (a) in relation to a training provider in England who, but for the definition of “institution” in subsection (1), would not be regarded as an institution, means any persons responsible for the provider’s management; 45





- (a) add or omit a Council, or
  - (b) change the name of a Council.
- (3) But the regulations may not omit, or change the name of, Innovate UK or Research England.

#### Research and innovation functions and role of the Councils

#### 85 UK research and innovation functions

(1) <sup>(dsing(r)</sup> UKRI may—

- (a) carry out research into science, technology, humanities and new ideas,
- (b) facilitate, encourage and support research into science, technology, humanities and new ideas,
- (c) facilitate, encourage and support the development and exploitation of science, technology and new ideas,
- (d) collect, disseminate and advance knowledge in and in connection with science, technology, humanities and new ideas,
- (e) promote awareness and understanding of science, technology, humanities and new ideas,
- (f) provide advice on provide\*4 Tw Tr5eo(ili 61relakn)JTJ-177186 0 T-c .0004 Tc .0648 Tw t( i)-4.

87 Exercise of functions by science and humanities Councils

## 88 Exercise of functions by Innovate UK

- (1) UKRI must arrange for Innovate UK to exercise such functions of UKRI as UKRI may determine for the purpose of increasing economic growth in the United Kingdom.
- (2) But arrangements may not be made under this section for the exercise by Innovate UK of UKRI's function mentioned in section 85(1)(a). 5
- (3) Arrangements under this section must require Innovate UK, when exercising any function to which the arrangements relate, to have regard to the desirability of—
  - (a) benefitting (whether directly or indirectly) persons carrying on business in the United Kingdom, and 10
  - (b) improving quality of life in the United Kingdom.

## 89 Exercise of functions by Research England

- (1) UKRI must arrange for Research England to exercise such functions of UKRI as UKRI may determine for the purpose of giving financial support within subsection (2) or (3). 15
- (2) Financial support is within this subsection if it is given to the governing body of an eligible higher education provider in respect of expenditure incurred, or to be incurred, by the provider for the purposes of either or both of the following— 20
  - (a) the undertaking of research by the provider;
  - (b) the provision of facilities, or the carrying out of other activities, by the provider which its governing body considers it is necessary or desirable to provide or carry out for the purposes of, or in connection with, research. 25
- (3) Financial support is within this subsection if it is given to any person in respect of expenditure incurred, or to be incurred, by the person for the purposes of the provision by any person of services for the purposes of, or in connection with, the undertaking of research by eligible higher education providers receiving financial support which is within subsection (2). 30
- (4) Arrangements under this section must require Research England, when exercising a function for the purpose of giving financial support, to consult such persons as Research England considers appropriate before determining any terms and conditions to be imposed in relation to the financial support.
- (5) "Eligible higher education provider" has the same meaning as in section 37. 35

## 90 Exercise of functions by the Councils: supplementary

- (1) UKRI may arrange for any Council to exercise such other functions of UKRI as UKRI may determine in addition to those exercisable by the Council pursuant to arrangements under section 87, 88 or 89 (as the case may be).
- (2) A function of UKRI which is exercisable by a Council on UKRI's behalf pursuant to arrangements under sections 87 to 89 or subsection (1) may also be exercised by UKRI in other ways. 40
- (3) Arrangements under sections 87 to 89 or subsection (1) must require the Council concerned to provide UKRI with such advice or information about the

exercise of any function to which the ar1)

- (b) it relates to the period during which the function concerned is being exercised.

### Funding and directions

#### 93 Grants to UKRI from the Secretary of State

- (1) The Secretary of State may make grants to UKRI of such amounts, and subject to such terms and conditions, as the Secretary of State considers appropriate.
- (2) Where a grant is made in respect of functions exercisable by Research England pursuant to arrangements under section 89, any terms and conditions under subsection (1) may not be framed by reference to—
- (a) particular courses of study or programmes of research (including the contents of courses or programmes and the manner in which they are taught, supervised or assessed), or
  - (b) the criteria for the selection and appointment of academic staff and for the admission of students.
- (3) Terms and conditions under subsection (1) may, in particular—
- (a) enable the Secretary of State to require the repayment, in whole or in part, of sums paid by the Secretary of State if any of the terms and conditions subject to which the sums were paid is not complied with, and
  - (b) require the payment of interest in respect of any period during which a sum due to the Secretary of State in accordance with any of the terms and conditions remains unpaid.

#### 94 Secretary of State's power to give directions to UKRI

- (1) The Secretary of State may give UKRI directions about the allocation or expenditure by UKRI of grants received under section 93.
- (2) But the Secretary of State may not give a direction under this section in respect of functions exercisable by Research En



## 99 Provision of research services

- (1) UKRI may, in connection with any of its functions, provide research services to a person (whether or not in the United Kingdom).
- (2) The following are “research services”—
  - (a) undertaking research in relation to science, technology, humanities or new ideas;
  - (b) making facilities available for the undertaking of such research by another person;
  - (c) the carrying out of any other activity for the purposes of, or in connection with, the undertaking of such research.
- (3) Research services provided by virtue of this section may be provided subject to such terms and conditions as UKRI considers appropriate.
- (4) UKRI may charge for research services provided by virtue of this section.

## 100 Representing the United Kingdom

UKRI must, if so requested by the Secretary of State, represent the government of the United Kingdom in matters relating to international relations in any field of activity connected to its functions.

## Supplementary

## 101 Predecessor bodies and preservation of symbolic property

- (1) The following bodies corporate (each a “research council”) cease to exist—
  - (a) the Arts and Humanities Research Council,
  - (b) the Biotechnology and Biological Sciences Research Council,
  - (c) the Economic and Social Research Council,
  - (d) the Engineering and Physical Sciences Research Council,
  - (e) the Medical Research Council,
  - (f) the Natural Environment Research Council,
  - (g) the Science and Technology Facilities Council, and
  - (h) the Technology Strategy Board.
- (2) The Royal Charters establishing the research councils, and any supplemental Royal Charter granted to a council, are revoked.
- (3) A property transfer scheme made by the Secretary of State under Schedule 10 in connection with a research council must, in particular, make provision for the transfer of the symbolic property of the council to UKRI.
- (4) The symbolic property of a research council is—
  - (a) the name of, and any other name used by, the council;



“Council” has the meaning given in section 84;  
“humanities” includes the arts;

- (b) subject to subsection (3), a Royal Charter granted before this Act is passed or in the same Session as this Act.
- (3) Provision may be made under subsection (1) by virtue of subsection (2)(b) only

108	Directions	
	Any power conferred by this Act to give directions includes power, exercisable in the same manner and subject to the same conditions or limitations, to vary or revoke directions previously given.	
109	General interpretation	5
	In this Act—	
	“notice” means written notice (and to “notify” means to give written notice);	
	“the OfS” has the meaning given by section 1;	
	“primary legislation” means—	10
	(a) an Act of Parliament;	
	(b) an Act of the Scottish Parliament;	
	(c) a Measure or Act of the National Assembly for Wales;	
	(d) Northern Ireland legislation;	
	“secondary legislation” means an instrument made under primary legislation;	15
	“UKRI” has the meaning given by section 83.	
110	Minor and consequential amendments	
	(1) Schedule 11 contains minor and consequential amendments relating to Part 1.	
	(2) Schedule 12 contains minor and consequential amendments relating to Part 3.	20
111	Extent	
	(1) Subject to the rest of this section, this Act extends to England and Wales only.	
	(2) The following provisions also extend to Scotland and Northern Ireland—	
	(a) sections 71 and 72 (powers to obtain and use application-to-acceptance data);	25
	(b) Part 3 (research);	
	(c) this Part.	
	(3) Any amendment or repeal made by this Act has the same extent within the United Kingdom as the enactment amended or repealed.	
	(4) Subsection (3) does not apply to the amendment made by section 78(4) (power to make alternative payments) which—	30
	(a) so far as it inserts subsection (4B)(d) into section 22 of the Teaching and Higher Education Act 1998, extends to England and Wales, Scotland and Northern Ireland,	
	(b) so far as it inserts subsection (4B)(e), (f) and (g) into that section, extends to England and Wales and Northern Ireland, and	35
	(c) otherwise extends to England and Wales only.	
112	Commencement	
	(1) This Part, apart from section 103, comes into force on the day on which this Act is passed.	40

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- (2) The remaining provisions of this Act come into force on such day as the Secretary of State may by regulations made by statutory instrument appoint.
  - (3) Before making regulations bringing section 78 (power to make alternative payments) into force, the Secretary of State must consult the Welsh Ministers.
  - (4) Regulations under this section may appoint different days for different purposes or areas. 5

### 113 Short title

- (1) This Act may be cited as the Higher Education and Research Act 2016.
- (2) This Act is to be included in the list of Education Acts set out in section 578 of the Education Act 1996. 10

## SCHEDULES

### SCHEDULE 1

Section 1

#### THE OFFICE FOR STUDENTS

##### Status

- 1 (1) The OfS is not to be regarded—
  - (a) as the servant or agent of the Crown, or
  - (b) as enjoying any status, immunity or privilege of the Crown.
- (2) The OfS's property is not to be regarded—
  - (a) as the property of the Crown, or
  - (b) as property held on behalf of the Crown.

##### Membership

- 2 (1) The OfS is to consist of the following members appointed by the Secretary of State—
  - (a) a chair ("the chair"),
  - (b) the Chief Executive Officer,
  - (c) the Director for Fair Access and Participation, and
  - (d) at least seven and not more than twelve other members ("the ordinary members").
- (2) The Secretary of State must, in appointing the chair and the ordinary members, have regard to the desirability of the OfS's members (between them) having experience of—
  - (a) representing or promoting the interests of individual students, or students generally, on higher education courses provided by higher education providers,
  - (b) providing higher education on behalf of an English higher education provider or being responsible for the provision of higher education by such a provider,
  - (c) employing graduates of higher education courses provided by higher education providers covering a range of academic and practical disciplines,
  - (d) promoting choice for consumers or other service users, and encouraging competition, in industry or an42nye.5(hig)5.4(h)-1.5(3.8(mpe Tc 39ac .04543

- (3) A person may not be appointed as a member of the OfS if the person is a civil servant.
- (4) In this Schedule, “civil servant” means a person employed in the civil service of the State.

#### The Director for Fair Access and Participation 5

- 3 (1) The Director for Fair Access and Participation (“the Director”) is responsible for reporting to the other members of the OfS on the performance by the OfS of its access and participation functions.
- (2) The Director may also report to the other members of the OfS on the measures taken by the OfS to comply with its duty under section 2(1)(d) (duty to have regard to the need to promote equality of opportunity etc) in performing a particular function of the OfS. 10
- (3) For the purposes of this paragraph, the OfS’s “access and participation functions” are the functions conferred on it by or under—
- (a) section 21 (refusal to renew an access and participation plan), 15
  - (b) sections 28 to 33 (access and participation plans),
  - (c) section 34 (advice on good practice),
  - (d) section 35 (duty to protect academic freedom in performing certain access and participation functions), and
  - (e) section 36 (power of the Secretary of State to require a report). 20

#### Terms of appointment and tenure of members

- 4 (1) A person holds and vacates office as a member of the OfS in accordance with the terms of his or her appointment.
- (2) The terms and conditions of a person’s appointment as a member of the OfS are to be determined by the Secretary of State; but that is subject to the following provisions of this Schedule. 25
- (3) The matters with which the terms and conditions of a member’s appointment may deal include, in particular—
- (a) the period for which the member is to hold office;
  - (b) the member’s eligibility for re-appointment; 30
  - (c) circumstances in which membership may be suspended.
- 5 (1) A person may resign from office as a member of the OfS by notifying the Secretary of State.
- (2) The Secretary of State may remove a person from office as a member of the OfS on any of the following grounds— 35
- (a) absence from the OfS’s meetings for a continuous period of more than six months without the OfS’s permission,
  - (b) inability or unfitness to carry out the functions of the office, or
  - (c) such other grounds as the Secretary of State considers appropriate.
- (3) If a person appointed as a member of the OfS becomes a civil servant, the person ceases to be a member. 40



### Procedure

- 9 (1) The OfS may determine—
- (a) its own procedure, and
  - (b) the procedure of any OfS committee;
- but that is subject to the rest of this paragraph.
- (2) The quorum for a meeting of the OfS is half the number of its members.
- (3) A representative of the Secretary of State is entitled—
- (a) to attend any meeting of the OfS or of any OfS committee, and
  - (b) to take part in any deliberations (but not in decisions) at such meetings.
- (4) The OfS must provide the Secretary of State, or a representative of the Secretary of State, with such copies of documents distributed to its members or to any OfS committee as the Secretary of State or representative may require it to provide.
- 10 The validity of any proceedings of the OfS, or of any OfS committee, is not affected by a vacancy or a defective appointment.

### Delegation of functions

- 11 (1) The OfS may delegate any of its functions to—
- (a) a member of the OfS,
  - (b) an employee of the OfS authorised for that purpose, or



- (6) In this Schedule “financial year” means—
- (a) the period beginning with the date on which the OfS is established and ending with the second 31 March following that date, and
  - (b) each successive period of 12 months.

#### Annual report

- 13 (1) The OfS must prepare a report on the performance of its functions during each financial year.
- (2) The report must include the statement of accounts in respect of that year.
  - (3) The report relating to a financial year must be prepared as soon as possible after the end of the financial year.
  - (4) The OfS must send the report to the Secretary of State.
  - (5) The Secretary of State must lay the report before Parliament.

#### Seal and evidence

- 14 (1) The application of the OfS’s seal must be authenticated by the signature of—
- (a) the chair or some other person authorised for that purpose by the OfS, and
  - (b) one other member of the OfS.
- (2) A document purporting to be duly executed under the OfS’s seal or signed on its behalf—
- (a) is to be received



- (a) had a high level quality rating at the relevant time, the fee limit is such limit, not exceeding the higher amount, as is provided by the plan for the relevant course and for the relevant academic year, and
  - (b) in any other case, the fee limit is such limit, not exceeding the applicable sub-level amount, as is provided by the plan for the relevant course and for the relevant academic year. 5
- (3) “A high level quality rating” means such rating or ratings given in accordance with arrangements made under section 25 (rating the quality of, and standards applicable to, higher education) as the Secretary of State determines to be a high level quality rating for the purposes of this paragraph. 10
- (4) “The relevant time” means at the time when the access and participation plan is approved.
- (5) “The higher amount” means such amount as may be prescribed for the purposes of this paragraph as the higher amount. 15
- (6) The Secretary of State determines “the sub-level amount” for the purposes of this paragraph, and may determine different amounts for different descriptions of provider.
- (7) Those descriptions may be by reference only to—
  - (a) whether a provider has or has not a rating given to it in accordance with arrangements under section 25, and 20
  - (b) where it has such a rating, the level, type or other description of the rating.
- (8) Any amount determined as “the sub-level amount”—
  - (a) must not exceed the higher amount, and 25
  - (b) must be greater than the floor amount.
- (9) “The floor amount” means such amount as may be prescribed for the purposes of this paragraph as the floor amount.
- (10) The “applicable” sub-level amount in relation to a provider is the sub-level amount determined under sub-paragraph (6) which applies to the provider. 30
- (11) “Prescribed” means prescribed by regulations made by the Secretary of State.

The fee limit where the provider has no access and participation plan

- 3 (1) This paragraph applies if an access and participation plan approved by the OfS under section 28 in relation to the provider is not in force, and does not come into force, when the relevant academic year begins. 35
- (2) If the provider—
  - (a) had a high level quality rating within the meaning of paragraph 2 at the relevant time, the fee limit is the basic amount, and
  - (b) in any other case, the fee limit is the applicable sub-level amount. 40
- (3) “The relevant time” means on 1 January in the calendar year before the calendar year in which the relevant academic year begins.
- (4) “The basic amount” means such amount as may be prescribed for the purposes of this paragraph as the basic amount.



- (a) the Secretary of State is satisfied that the increase is no greater than is required to maintain the value of the amount in real terms, or
  - (b) a draft of the regulations has been laid before, and approved by a resolution of, each House of Parliament.
- (5) For the purposes of sub-paragraph (2)(a), (3)(a) and (4)(a), the Secretary of State is to have regard to such index of prices as may be specified in, or determined in accordance with, regulations made by the Secretary of State under this sub-paragraph. 5

### SCHEDULE 3

Section 15

#### MONETARY PENALTIES: PROCEDURE, APPEALS AND RECOVERY 10

##### Introduction

- 1 This Schedule applies in relation to the imposition by the OfS of a monetary penalty on a registered higher education provider under section 15.

##### Procedure

- 2 (1) Before imposing a monetary penalty on the provider under that section, the OfS must notify the provider of its intention to do so. 15
- (2) The notice must—
- (a) specify the proposed amount of the penalty,
  - (b) specify the OfS's reasons for proposing to impose the penalty,
  - (c) specify the period during which the provider may make representations about the proposal ("the specified period"), and 20
  - (d) specify the way in which those representations may be made.
- (3) The specified period must not be less than 28 days beginning with the date on which the notice is received.
- (4) The OfS must have regard to any representations made by the provider during the specified period in deciding whether to impose a monetary penalty on it. 25
- (5) Having decided whether or not to impose a monetary penalty, the OfS must notify the provider of its decision.
- (6) Where the decision is to impose a monetary penalty, the notice must specify— 30
- (a) the amount of the penalty, and
  - (b) the period within which the penalty must be paid or the periods within which different portions of the penalty must be paid.
- (7) The notice must also contain information as to— 35
- (a) the grounds for imposing the penalty,
  - (b) how payment may be made,
  - (c) rights of appeal,
  - (d) the period within which an appeal may be made, and
  - (e) the consequences of non-payment. 40

- (8) The requirement to pay the penalty is suspended at any time when an appeal could be brought in respect of the penalty or such an appeal is pending.
- (9) But that does not prevent the requirement to pay taking effect if the provider notifies the OfS that it does not intend to appeal.

#### Appeals

- 3 (1) The governing body of a provider may appeal to the First-tier Tribunal

SCHEDULE 4

Section 26

ASSESSING HIGHER EDUCATION : DESIGNATED BODY

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- (a) the body is suitable to perform the recommended function or functions, and



- (a) include reasons for the Secretary of State's decision, and
  - (b) specify the date on which the designation is removed.
- (3) The Secretary of State may only remove the designation if—
- (a) the Secretary of State is satisfied that removing the designation would be appropriate for securing the effective assessment of the quality and standards of higher education provided by English higher education providers, or
  - (b) the designated body consents to the removal of the designation.
- (4) Before removing the designation the Secretary of State must consult—
- (a) the OfS,
  - (b) a number of registered higher education providers that, taken together, appear to the Secretary of State to comprise a broad range of the different types of such providers,
  - (c) a number of persons that, taken together, appear to the Secretary of State to represent, or promote the interests of, a broad range of students on higher education courses provided in England by registered higher education providers,
  - (d) a number of persons that, taken together, appear to the Secretary of State to represent, or promote the interests of, a broad range of employers of graduates, and
  - (e) such other persons as the Secretary of State considers appropriate.
- (5) In determining whether a designation under this Schedule should be removed, the Secretary of State must have regard to any relevant information that the OfS has provided to the Secretary of State.





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### Application for search warrant by an authorised person

- 2 (1) A search warrant may be issued only on the application of a person authorised in writing by the OfS or the Secretary of State to exercise the powers conferred by a search warrant (an “authorised person”).
- (2) An application for a search warrant in respect of premises may be made without notice being given to—
  - (a) the supported higher education provider occupying the premises, or
  - (b) any other persons who may be affected by it.
- (3) An application for a search warrant in respect of premises must be supported by an information in writing.
- (4) An authorised person applying for a search warrant must answer on oath any question that the justice of the peace hearing the application asks the person.

### Search warrant

- 3 (1) A search warrant must—
  - (a) specify the name of the authorised person who applied for it,
  - (b) specify the date on which it is issued,
  - (c) state that it is issued under this Schedule,
  - (d) specify the premises to be searched,
  - (e) specify the supported higher education provider occupying the premises, and
  - (f) identify, so far as is possible, the suspected breach of a registration condition or funding condition of the provider.
- (2) A search warrant may permit or require a constable to accompany an authorised person who is executing it.
- (3) A search warrant authorises an authorised person to enter each set of premises specified in the warrant on one occasion only unless it specifies that it authorises multiple entries.
- (4) If a search warrant specifies that it authorises multiple entries, it must also specify whether the number of entries authorised is unlimited (A) o-4.it is i-6.2.J -17.1639 .4918 0

- registration condition or funding condition of the supported higher education provider occupying the premises,
- (c) for that purpose, to inspect items found on the premises,
  - (d) for that purpose, to copy documents found on the premises, and
  - (e) to seize and retain items found on the premises which the authorised person reasonably believes are evidence of a breach of a registration condition or a funding condition of the supported higher education provider occupying the premises.
- (2) A search warrant may be executed by any authorised person.
- (3) A constable accompanying an authorised person under paragraph 3(2) may, if necessary, use reasonable force to enable the exercise of the powers conferred by the warrant.
- (4) An authorised person entering premises under a search warrant may—
- (a) be accompanied by such other persons as the authorised person considers necessary, and
  - (b) take onto the premises such equipment as the authorised person considers necessary.

#### Entering and searching premises

- 5 (1) Where the occupier of the premises to be entered and searched is present at the time when an authorised person seeks to execute a search warrant, the authorised person must—
- (a) identify himself or herself to the occupier,
  - (b) produce to the occupier documentary evidence that he or she is an authorised person,
  - (c) produce the search warrant to the occupier, and
  - (d) supply the occupier with a certified copy of it.
- (2) Where the occupier of the premises is not present at the time when an authorised person seeks to execute a search warrant—
- (a) if another person who appears to the authorised person to be in charge of the premises is present, sub-paragraph (1) has effect as if references to the occupier were references to the other person;
  - (b) if there is no such person present, the authorised person must leave a certified copy of the warrant in a prominent place on the premises.
- (3) An authorised person who enters premises under a search warrant must take reasonable steps to ensure that when the authorised person leaves the premises, they are as secure as they were before the authorised person entered them.
- (4) Entry and search under a search warrant may not take place after the end of the period of one month beginning with the date on which it is issued.

#### Inspecting, copying, seizing and retaining items

- 6 (1) The powers conferred by a search warrant to inspect, copy, seize and retain items found on premises include—
- (a) power to require a person on the premises who is holding or accountable for items that are on

- (b) power to require a person on the premises to provide an explanation of an item or state where an item may be found,
  - (c) in relation to documents kept by means of a computer, power to require them to be produced in a form in which they are legible and can be taken away, and
  - (d) power to require a person on the premises to provide such other assistance as the authorised person may reasonably require.
- (2) Those powers also include—
- (a) power to check the operation of a computer or electronic storage device, and
  - (b) power to require a person within sub-paragraph (3) to provide the authorised person with such reasonable assistance as the authorised person may require for that purpose.
- (3) A person is within this sub-paragraph if the person is—
- (a) a person by whom or on whose behalf the computer or device is or has been used, or
  - (b) a person having charge of, or otherwise concerned with the operation of, the computer or device.
- (4) The power conferred by a search warrant to inspect, copy, seize and retain items does not include power to inspect, copy, seize or retain excluded items.
- (5) “Excluded items” means items that are—
- (a) items subject to legal privilege (as defined in section 10 of the Police and Criminal Evidence Act 1984);
  - (b) excluded material (as defined in section 11 of that Act);
  - (c) special procedure material (as defined in section 14 of that Act).
- (6) If an item is seized from premises in the exercise of powers conferred by a search warrant, the authorised person executing the warrant—
- (a) must make reasonable efforts to give a notice to a person who appears to be the occupier of the premises or otherwise to be in charge of the premises (an “affected person”), and
  - (b) if it is not reasonably practicable to do so, must leave a copy of the notice in a prominent place on the premises.
- (7) A notice under sub-paragraph (6) must—
- (a) state what has been seized and the reason for its seizure, and
  - (b) specify which registration condition or funding condition the authorised person believes has been breached.
- (8) An authorised person exercising powers under a search warrant must—

- (10) An item may not be retained for use as evidence on a prosecution for an offence if a photograph or a copy would be sufficient for that purpose.
- (11) Nothing in this paragraph confers power to search a person.

#### Offence

- 7 (1) A person commits an offence if, without reasonable excuse, the person— 5
  - (a) intentionally obstructs the exercise of a power conferred by a search warrant, or
  - (b) fails to comply with a requirement reasonably imposed in the exercise of a power conferred by a search warrant.
- (2) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding level 4 on the standard scale. 10

#### Self-incrimination

- 8 (1) An explanation or information provided by a person in response to a requirement under paragraph 6(1)(b) or (d) or (2)(b) may be used in evidence against the person, subject to sub-paragraphs (2) to (4). 15
- (2) In criminal proceedings against the person—
  - (a) no evidence relating to the explanation or information may be adduced by or on behalf of the prosecution, and
  - (b) no question relating to it may be asked by or on behalf of the prosecution. 20
- (3) Sub-paragraph (2) does not apply if the proceedings are for—
  - (a) an offence under paragraph 7 of this Schedule, or
  - (b) an offence under section 5 of the Perjury Act 1911 (false statements made otherwise than on oath).
- (4) Sub-paragraph (2) does not apply if, in the proceedings— 25
  - (a) evidence relating to the explanation or information is adduced by or on behalf of the person who provided it, or
  - (b) a question relating to it is asked by or on behalf of that person.

#### Interpretation

- 9 (1) In this Schedule— 30
  - “authorised person” has the meaning given in paragraph 2;
  - “document” means anything in which information of any description is recorded;
  - “item” includes—
    - (a) a document; 35
    - (b) a computer or electronic storage device;
  - “supported higher education provider” has the meaning given in section 56(2).
- (2) For the purposes of this Schedule, references to items found on premises include— 40
  - (a) documents stored on computers or electronic storage devices on the premises, and





- (2) The Secretary of State may designate the recommended body only if the Secretary of State considers that the body is suitable to be designated under this Schedule.
- (3) If the Secretary of State decides to designate the recommended body, the Secretary of State must—
  - (a) notify the body of the designation before the date on which the designation takes effect (“the effective date”), and
  - (b) publish notice of the designation before that date.
- (4) The notice of the designation must state—
  - (a) the name of the body, and
  - (b) the effective date.
- (5) If the Secretary of State decides not to designate the recommended body, the Secretary of State must publish the reasons for not doing so.

#### Bodies suitable to be designated under this Schedule

- 4 (1) A body is suitable to be designated under this Schedule if the body satisfies conditions A to D.
- (2) Condition A is that the body is capable of performing the duty of the relevant body under section 59(1) in an effective manner.
- (3) Condition B is that—
  - (a) the persons who determine the strategic priorities of the body represent a broad range of registered higher education providers,
  - (b) the body commands the confidence of registered higher education providers, and
  - (c) the body exercises its functions independent of any particular higher education provider.
- (4) Condition C is that the body consents to being designated under this Schedule.
- (5) Condition D is that the body is a body corporate and is not—
  - (a) a servant or agent of the Crown, or
  - (b) a body to which the Secretary of State appoints members.

#### Removal of designation

- 5 (1) The Secretary of State may by notice remove a designation under this Schedule.
- (2) The notice must—
  - (a) include reasons for the Secretary of State’s decision, and
  - (b) specify the date on which the designation is removed.
- (3) The Secretary of State may only remove the designation if—
  - (a) the Secretary of State is satisfied that removing the designation would be appropriate, or
  - (b) the designated body consents to the removal of the designation.
- (4) Before removing the designation the Secretary of State must consult—
  - (a) the OfS,

- 
- (b) a number of registered higher education providers that, taken together, appear to the Secretary of State to comprise a broad range of the different types of such providers,
- (c) a number of persons that, taken together, appear to the Secretary of State to represent, or promote the interests of, a broad range of students on higher education courses provided in England by registered higher education providers, 5
- (d) a number of persons that, taken together, appear to the Secretary of State to represent, or promote the interests of, a broad range of employers of graduates, and 10
- (e) such other persons as the Secretary of State considers appropriate.
- (5) In determining whether a designation under this Schedule should be removed, the Secretary of State must have regard to any relevant information that the OfS has provided to the Secretary of State.
- (6) The Secretary of State must publish a notice under this paragraph. 15

## PART 2

## OVERSIGHT BY THE OFS

## Application

- 6 This Part applies if there is a body designated under this Schedule.

## Oversight arrangements 20

- 7 The OfS must make arrangements for holding the designated body to account for the performance of its duty under section 59(1).

## Annual report by the designated body

- 8 (1) As soon as possible after the end of each annual reporting period, the designated body must prepare and send to the OfS a report about the performance of its duty under section 59(1) during the period. 25
- (2) “Annual reporting period”, in relation to a designated body, means—
- (a) the period of 12 months beginning with the effective date, and
- (b) each successive period of 12 months.

## Triennial report by the OfS 30

- 9 (1) As soon as possible after the end of each triennial reporting period, the OfS must prepare and send to the Secretary of State a triennial report about—
- (a) how the designated body has performed its duty under section 59(1) during the period,
- (b) whether the designated body should continue to be designated under Part 1 of this Schedule, 35
- (c) the appropriateness of any fees charged by the designated body under section 61, and
- (d) any other matters that the OfS considers relevant.
- (2) In preparing a triennial report, the OfS must have regard to any views provided to the OfS by a person listed in sub-paragraph (3) about— 40

- (a) the matters listed in sub-paragraph (1)(a) to (c), and
  - (b) what other matters, if any, should be dealt with in the report.
- (3) Those persons are—
- (a) registered higher education providers,
  - (b) persons representing, or promoting the interests of, students on higher education courses provided in England by registered higher education providers,
  - (c) persons representing or promoting the interests of, employers of graduates, and
  - (d) such other persons as the OfS considers appropriate.
- (4) “Triennial reporting period”, in relation to a designated body, means—
- (a) the period of 3 years beginning

## Procedure

- 2 (1) The notice which the OfS gives the governing body under section 65(1) must specify—
- (a) the amount required to be paid, and
  - (b) the period within which payment is required to be made (which must not be less than 28 days). 5
- (2) The notice must also contain information as to—
- (a) how payment may be made,
  - (b) rights of appeal,
  - (c) the period within which an appeal may be made, and
  - (d) the consequences of non-payment. 10
- (3) The governing body may require the OfS to provide a detailed breakdown of the amount specified in the notice.
- (4) The requirement to pay the costs is suspended at any time when an appeal could be brought in respect of the requirement to pay the costs or such an appeal is pending. 15
- (5) But that does not prevent the requirement to pay the costs taking effect if the governing body notifies the OfS that it does not intend to appeal.

## Appeals

- 3 (1) The governing body of a provider may appeal to the First-tier Tribunal against—
- (a) a decision under section 65 to require it to pay costs;
  - (b) a decision as to the amount of those costs. 20
- (2) An appeal under this paragraph may be made on the grounds—
- (a) that the decision was based on an error of fact;
  - (b) that the decision was wrong in law;
  - (c) that the decision was unreasonable. 25
- (3) On an appeal under this paragraph the Tribunal may—
- (a) withdraw the requirement to pay the costs;
  - (b) confirm that requirement;
  - (c) vary that requirement;
  - (d) remit the decision whether to confirm the requirement to pay the costs, or any matter relating to that decision, to the OfS. 30

## Interest and recovery

- 4 (1) This paragraph applies if all or part of an amount of costs that a governing body is required to pay under section 65 is unpaid by the time when it is required to be paid. 35
- (2) The unpaid amount of the costs for the time being—
- (a) carries interest at the rate for the time being specified in section 17 of the Judgments Act 1838, and
  - (b) does not also carry interest as a judgment debt under that section. 40

- (3) The total amount of interest imposed under sub-paragraph (2) must not exceed the amount of the costs.
- (4) The OfS may recover from the governing body, as a civil debt due to it, the unpaid amount of the costs and any unpaid interest.
- (5) Any sums received by the OfS by way of requirement to pay costs under section 65 or interest under this paragraph must be paid into the Consolidated Fund.

## SCHEDULE 8

Section 82

### HIGHER EDUCATION CORPORATIONS IN ENGLAND

#### Education Reform Act 1988

- 1 The Education Reform Act 1988 is amended as follows.
- 2 In section 122 (orders incorporating higher education institutions maintained by local authorities)—
  - (a) in the heading, after “local authorities” insert “in Wales”, and
  - (b) in subsection (1), after “local authority” insert “in Wales”.
- 3 Before section 122A insert—

“122ZA Orders for further education corporations in England to become higher education corporations

  - (1) The Secretary of State may by order provide for a further education corporation in England to become a higher education corporation.
  - (2) The first members of the higher education corporation are to be appointed by the governing body of the further education corporation.
  - (3) On such date as may be specified in the order—
    - (a) the corporation ceases to be a further education corporation and becomes a higher education corporation, and
    - (b) any member of the further education corporation who is not

## 6 Before section 124 insert—

## “123A Principal powers of a higher education corporation in England

- (1) A higher education corporation in England has power—
- (a) to provide higher education;
  - (b) to provide further education; 5
  - (c) to provide secondary education suitable to the requirements of persons who have attained the age of 14 years;
  - (d) to provide education which is secondary education by virtue of section 2(2B) of the Education Act 1996 (definition of secondary education); 10
  - (e) to participate in the provision of secondary education at a school; and
  - (f) to carry out research and to publish the results of the research or any other material arising out of or connected with it in such manner as the corporation think fit. 15
- (2) A higher education corporation in England may not provide education of a kind specified in subsection (1)(c) or (d) unless they have consulted such local authorities as they consider appropriate.

## 123B Supplementary powers of a higher education corporation in England

- (1) A higher education corporation in England has power to do anything which appears to the corporation to be necessary or expedient for the purpose of, or in connection with, the exercise of any of their principal powers. 20
- (2) The corporation’s “principal powers” are the powers conferred by section 123A(1).” 25

## 7 In section 124 (powers of a higher education corporation)—

- (a) in the heading, after “higher education corporation” insert “in Wales”, and
- (b) in subsections (1), (1A) and (2), after “higher education corporation” insert “in Wales”. 30

## 8 Before section 124A insert—

## “124ZA Instrument of government of higher education corporations in England

- (1) For each higher education corporation in England there is to be an instrument providing for the constitution of the corporation (to be known as the instrument of government). 35
- (2) A higher education corporation in England may vary, replace or revoke the instrument of government.
- (3) The corporation must not make changes to the instrument of government that (but for section 125A) would result in the corporation ceasing to be a charity. 40

## 124ZB Proceedings etc. of higher education corporations in England

- (1) The validity of any proceedings of a higher education corporation in England, or of a committee of such a corporation, is not affected by—

- (a) a vacancy among the members, or
- (b) a defect in the appointment or nomination of a member.

- (ii) after “higher education corporation” insert “in Wales”.
- 14 In section 125A (charitable status of a higher education corporation)—
- (a) for “English higher education corporation” substitute “higher education corporation in England”, and
  - (b) for “Welsh higher education corporation” substitute “higher education corporation in Wales”.
- 15 In section 127(1) (transfer of staff to higher education corporations), after “higher education corporation” insert “established under section 121 or 122”.
- 16 Before section 128 insert—
- “127A Dissolution of higher education corporations in England
- (1) If requested to do so by notice given by a higher education corporation in England, the Secretary of State may make an order providing for—
    - (a) the dissolution of the corporation, and
    - (b) the transfer of property, rights and liabilities of the corporation to—
      - (i) a person appearing to the Secretary of State to be wholly or mainly engaged in the provision of educational facilities or services of any description;
      - (ii) a body corporate established for purposes which include the provision of such facilities or services;
      - (iii) the Office for Students.
  - (2) An order under this section must not provide for transferring the property, rights or liabilities of a higher education corporation in England to a person or body without the consent of the person or body.
  - (3) Subsection (4) applies where the recipient of a transfer under an order under this section is not a charity established for charitable purposes which are exclusively educational purposes.
  - (4) Any property transferred must be transferred on trust to be used for charitable purposes which are exclusively educational purposes.
  - (5) Before making an order under this section the Secretary of State must consult the Office for Students.



- 19 In section 157(2)(a) (variation of trust deeds etc: institutions conducted by higher education corporations), after “higher education corporation” insert “in Wales”.
- 20 In section 161(1) (interpretation of Part 2)—
- (a) after paragraph (b) insert—
    - “(ba) “further education corporation in England” means a further education corporation established to conduct an institution whose activities are carried on, or principally carried on, in England;
    - (bb) “further education corporation in Wales” means a further education corporation established to conduct an institution whose activities are carried on, or principally carried on, in Wales;”, and
  - (b) after paragraph (d) insert—
    - “(e) “higher education corporation in England” means a higher education corporation established to conduct an institution whose activities are carried on, or principally carried on, in England;
    - (f) “higher education corporation in Wales” means a higher education corporation established to conduct an institution whose activities are carried on, or principally carried on, in Wales.”
- 21 In Schedule 7 (the higher education corporations)—
- (a) for the heading substitute “Higher education corporations in Wales established before the appointed day”, and
  - (b) in paragraph 1(1), (2) and (3)(a), after “higher education corporation” insert “in Wales”.
- 22 In Schedule 7A (instruments of government made by Privy Council), for the heading substitute “Higher education corporations in Wales established on or after the appointed day: instruments of government made by Privy Council”.

Further and Higher Education Act 1992

- 23 The Further and Higher Education Status”.

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- (b) as enjoying any status, immunity or privilege of the Crown.
- (2) UKRI's property is not to be regarded—
- (a) as the property of the Crown, or
  - (b) as property held on behalf of the Crown.

#### Membership of UKRI

- 2 (1) UKRI is to consist of the following members appointed by the Secretary of State—

- 5 (1) This paragraph applies to a person (a “Ministerial appointee”) appointed as—
- (a) a member of UKRI,
  - (b) an executive chair, or
  - (c) an ordinary Council member wh

Staffing of UKRI

but that is subject to the rest of this paragraph.

- (2) A Council may determine—
- (a) its own procedure, and
  - (b) the procedure of any Council sub-committee it appoints;
- but that is subject to the rest of this paragraph.

- (3) UKRI must send a copy of each statement of accounts to the Secretary of State and the Comptroller and Auditor General before the end of August next following the financial year to which the statement relates.
- (4) The Comptroller and Auditor General must—
  - (a) examine, certify and report on each statement of accounts, and
  - (b) send a copy of each report and certified statement to the Secretary of State.
- (5) The Secretary of State must lay before Parliament a copy of each such report and certified statement.
- (6) In this Schedule “financial year” means—
  - (a) the period beginning with the date on which UKRI is established and ending with the second 31 March following that date, and
  - (b) each successive period of 12 months.

#### Annual report

- 14 (1) UKRI must prepare a report on the exercise of its functions during each financial year.
  - (2) The report must include the statement of accounts in respect of that year.
  - (3) The report relating to a financial year must be prepared as soon as possible after the end of the financial year.
  - (4) UKRI must send the report to the Secretary of State.
  - (5) The Secretary of State must lay the report before Parliament.

#### Seal and evidence

- 15 (1) The application of UKRI's seal must be authenticated by the signature of—
  - (a) a member of UKRI, or
  - (b) another person authorised

(3)	UKRI may not do any of the following except with the consent of the Secretary of State—	
	(a) borrow money;	
	(b) enter into joint ventures;	
	(c) form, participate in forming or invest in a company, partnership or other similar form of organisation;	5
	(d) invest sums.	
Public records		
17	In Part 2 of the Table in paragraph 3 of Schedule 1 to the Public Records Act 1958 (definition of public records), at the appropriate place insert— “United Kingdom Research and Innovation.”	10
Investigation by the Parliamentary Commissioner		
18	In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments etc subject to investigation), at the appropriate place insert— “United Kingdom Research and Innovation.”	15
House of Commons disqualification		
19	In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which all members are disqualified), at the appropriate place insert— “United Kingdom Research and Innovation (“UKRI”), any Council or other committee of UKRI and any sub-committee of such a Council or committee (see section 84 of, and paragraph 9 of Schedule 9 to, the Higher Education and Research Act 2016).”	20
Northern Ireland Assembly disqualification		
20	In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (bodies of which all members are disqualified), at the appropriate place insert— “United Kingdom Research and Innovation (“UKRI”), any Council or other committee of UKRI and any sub-committee of such a Council or committee (see section 84 of, and paragraph 9 of Schedule 9 to, the Higher Education and Research Act 2016).”	25 30
Freedom of information		
21	In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (public authorities to which that Act applies), at the appropriate place insert— “United Kingdom Research and Innovation.”	35
Public sector equality duty		
22	In Part 1 of Schedule 19 to the Equality Act 2010 (authorities subject to the public sector equality duty), in the group of entries under the heading	40

“Industry, business, finance etc”, at the end insert—  
“United Kingdom Research and Innovation.”

SCHEDULE 10  
TRANSFER SCHEMES

Section 104

Transfer schemes

- 1 (1) The Secretary of State may make one or more property transfer schemes or staff transfer schemes in connection with—
  - (a) the establishment of the OfS or UKRI by this Act, or
  - (b) any of the following ceasing to exist by virtue of this Act—
    - (i) the Higher Education Funding Council for England,
    - (ii) the office of Director of Fair Access to Higher Education, or
    - (iii) a research council listed in section 101(1)
- (2) In this Schedule, a “permitted transferor” means a body or office listed in sub-paragraph (1)(b).
- (3) A “property transfer scheme” is a scheme for the transfer from a permitted transferor of any property, rights or liabilities, other than rights or liabilities under or in connection with a contract of employment, to a permitted transferee.
- (4) A “staff transfer scheme” is a scheme for the transfer from a permitted transferor of any rights or liabilities under or in connection with a contract of employment to a permitted transferee.
- (5) In this Schedule, a “permitted transferee” means—
  - (a) the OfS,
  - (b) UKRI,
  - (c) the Secretary of State, or



- (b) make provision about the continuing effect of things done by the permitted transferor in respect of anything transferred;
  - (c) make provision about the continuation of things (including legal proceedings) in the process of being done by, or on behalf of, or in relation to, the permitted transferor in respect of anything transferred; 5
  - (d) make provision for references to the permitted transferor in an instrument or other document in respect of anything transferred to be treated as references to the permitted transferee.
- (3) A property transfer scheme may make provision for the shared ownership or use of property. 10
- (4) A staff transfer scheme may make provision which is the same as or similar to the TUPE regulations.
- (5) A property transfer scheme or a staff transfer scheme may provide for the scheme to be modified by agreement. 15

### Interpretation

- 3 (1) For the purposes of this Schedule—
- (a) an individual who holds employment in the civil service is to be treated as employed by virtue of a contract of employment, and
  - (b) the terms of the individual's employment in the civil service are to be regarded as constituting the terms of the contract of employment. 20
- (2) In this Schedule—
- (a) "civil service" means civil service of the State;
  - (b) "TUPE regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246); 25
  - (c) references to the transfer of property include references to the grant of a lease.

## SCHEDULE 11

Section 110

### MINOR AND CONSEQUENTIAL AMENDMENTS RELATING TO PART 1

- Public Records Act 1958 30
- 1 In Part 2 of the Table in paragraph 3 of Schedule 1 to the Public Records Act 1958 (definition of public records), omit the references to—
- (a) the Director of Fair Access to Higher Education, and
  - (b) the Higher Education Funding Council for England.
- Parliamentary Commissioner Act 1967 35
- 2 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments etc subject to investigation), omit the references to—
- (a) the Director of Fair Access to Higher Education, and
  - (b) the Higher Education Funding Council for England.

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**Superannuation Act 1972**

- 3 In Schedule 1 to the Superannuation Act 1972 (kinds of employment to which a scheme under section 1 of the 1972 Act can apply), omit—
- (a) “Employment by the Director of Fair Access to Higher Education.”
  - and
  - (b) “Higher Education Funding Council for England in receipt of remuneration.”

**House of Commons Disqualification Act 1975**

- 4 In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (disqualifying offices), omit the references to—
- (a) the Director of Fair Access to Higher Education, and
  - (b) any member of the Higher Education Funding Council for England in receipt of remuneration.

**Education Reform Act 1988**

- 5 The Education Reform Act 1988 is amended as follows.
- 6 In section 124B(2)(b) (accounts), for “the higher education funding council” substitute “the Higher Education Funding Council for Wales”.
- 7 (1) Section 128 (dissolution of higher

- 13 (1) Section 62 (establishment of ~~the~~ Higher Education Funding Council) is amended as follows.
- (2) In the heading, for “The Higher Education Funding Councils” substitute “The Higher Education Funding Council for Wales”.
- (3) In subsection (1)— 5  
(a) omit paragraph (a), and  
(b) in paragraph (b), after “them” insert “(referred to in this Act as “the HEFCW)””.
- (4) Omit subsection (2).
- (5) In subsection (4), for “a council” substitute “the HEFCW”. 10
- (6) Omit subsections (5) and (6).
- (7) In subsection (7)—  
(a) omit “institutions in England or”,  
(b) in paragraph (a), omit “England or, as the case may be,”, and  
(c) in paragraph (b), omit “, in both cases,”. 15
- (8) In subsection (7A), for “each council” substitute “the HEFCW”.
- (9) In subsection (8), for “one of the Councils” substitute “the HEFCW or the Office for Students”.
- (10) In subsection (9), for “each of the councils” substitute “the HEFCW”.
- 14 (1) Section 65 (administration of funds by councils) is amended as follows. 20
- (2) In the heading, for “councils” substitute “the HEFCW”.
- (3) In subsection (1)—  
(a) for “Each council” substitute “The HEFCW”, and  
(b) for “the council” substitute “the HEFCW”.
- (4) In subsection (2)(a), for “the council’s” substitute “the HEFCW’s”. 25
- (5) In subsection (3)—  
(a) for “A council” substitute “The HEFCW”, and  
(b) for “the council” substitute “the HEFCW”.
- (6) In subsection (3A)—  
(a) for “a Council” substitute “the HEFCW”, and 30  
(b) for “the Council” substitute “the HEFCW”.
- (7) In subsection (3B), for “the Council in question” substitute “the HEFCW”.
- (8) In subsection (4)—  
(a) for “a council” substitute “the HEFCW”, and  
(b) for “the council”, in each place, substitute “the HEFCW”. 35
- 15 (1) Section 66 (administration of funds: supplementary) is amended as follows.
- (2) In subsection (1)—  
(a) for “a council” substitute “the HEFCW”, and  
(b) for “the council”, in each place, substitute “the HEFCW”.



(3) After the entry for “g overning body” insert—

(4) For “institution in England or in Wales (in relation to higher education funding councils)” substitute “institution in Wales (in relation to the HEFCW)”.

#### Education Act 1994

- 25 (1) Section 18 of the Education Act 194 (power to reimburse certain payments to persons formerly employed in teacher training) is amended as follows.
- (2) In subsection (1), for “A higher education funding council” substitute “The Office for Students or the Higher Education Funding Council for Wales”.
- (3) In subsection (4)—
- (a) for “a higher education funding council” substitute “the Office for Students or (as the case may be) the Higher Education Funding Council for Wales”, and
  - (b) for “the council” substitute “they”.

#### Education Act 1996

- 26 In section 13 of the Education Act 1996 (local authorities’ general responsibility for education), for subsection (2)(b) substitute—
- “(b) the Higher Education Funding Council for Wales, or
  - (c) the Office for Students.”

#### Freedom of Information Act 2000



“Higher Education Funding Council for England” substitute “Office for Students”.

## SCHEDULE 12

- (ii) omit “in section 1(2) or (3) above or”.
- (4) In section 3 (re-allocation of activities connected with scientific research)—
  - (a) omit subsections (1) to (3), and
  - (b) in subsection (5), omit the words from “; and the provisions” to the end.
- (5) Omit Schedule 3 (transitional provisions).

Parliamentary Commissioner Act 1967

- 5 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments etc subject to investigation) omit the following entries—
  - “Arts and Humanities Research Council.”
  - “Biotechnology and Biological Sciences Research Council.”
  - “Economic and Social Research Council.”



Mineral Exploration and Investment Grants Act 1972

- 9 In section 1(3) of the Mineral Exploration and Investment Grants Act 1972 (conditions for making contributions in respect of mineral exploration) for

## Further Education Act 1985

- 14 In section 2(4)(a) of the Further Education Act 1985 (cases in which requirement that goods or services supplied at open market value disappplied) for the words from “the Arts” to “2004)” substitute “United Kingdom Research and Innovation”.

## Water Resources Act 1991

- 15 (1) The Water Resources Act 1991 is amended as follows.
- (2) In section 198 (information about underground water)—
- (a) in subsection (1), for “the Natural Environment Research Council” substitute “United Kingdom Research and Innovation (“UKRI)”
  - (b) in subsection (2)(a), for “the Natural Environment Research Council” substitute “UKRI”,
  - (c) in subsection (2)(b) and (c), for “that Council” substitute “UKRI”, and
  - (d) in subsection (4), for “the Natural Environment Research Council” substitute “UKRI”.
- (3) In section 205 (confidentiality of information about underground water)—
- (a) in subsection (1)—
    - (i) for “the Natural Environment Research Council” substitute “United Kingdom Research and Innovation (“UKRI)”
    - (ii) for “that Council” substitute “UKRI”, and
  - (b) in subsections (2) and (4)—
    - (i) for “the Natural Environment Research Council” substitute “UKRI”, and
    - (ii) for “that Council” substitute “UKRI”.



(d) the Engineering and Physical Sciences Research Council,

