



Department  
for Business  
Innovation & Skills

**CASE FOR CREATION OF THE  
OFFICE FOR STUDENTS**

A new public body in place of  
the Higher Education Funding  
Council for England (HEFCE)  
and the Office for Fair Access  
(OFFA)

JUNE 2016

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# 1. Summary

1. The HE Green Paper 'Fulfilling our Potential: Teaching Excellence, Social Mobility and Student Choice'<sup>1</sup> (Nov 2015) set out aims to streamline the higher education regulatory architecture, placing prime emphasis on promoting the interests of students and increasing choice through greater competition and transparency.
2. The Green Paper set out proposals to improve teaching quality, open up the higher education sector and drive value for money. To support these policies, subject to Parliament, our White Paper sets out proposals to reform the higher education system architecture to make it simpler and more efficient, and to ensure that it reflects the current sector and the challenges ahead.
3. There is a need for a simpler, less bureaucratic and less expensive system of regulation, that explicitly champions the student, employer and taxpayer interest in ensuring value for their investment in higher education. The current architecture is no longer fit for purpose and the role of the regulator needs to be updated to reflect the recent changes in government funding for HE and the growing diversity of the HE sector.
4. The new public body, the Office for Students, will bring together in one organisation the regulation of all higher education providers in the sector and operate a single regulatory gateway that creates a level playing field for all providers. It will bring together existing functions on teaching standards, market entry and widening participation. The current public body landscape to deliver these functions is complex and the approach outlined here aligns with Cabinet Office strategic transformation of the public bodies landscape and BIS' own simplification and transformational agenda, 'BIS 2020'.
5. The current regulatory functions of the Higher Education Funding Council for England, (HEFCE) and the Office for Fair Access (OFFA) under the statutory remit of the Director of Fair Access (DFA), would transfer to the OfS to be united under a single sector regulator. This will bring together the expertise and shared agenda of HEFCE and the DFA to streamline their functions and give a single body the responsibility for all widening participation functions and student access spending.
6. Subject to Parliament we will introduce new legislation to establish the new body and wind-up of the two legacy bodies/statutory remits with steps to preserve the expertise of staff. The legislation would also give OfS new powers to charge providers a registration fee to recover an element of their running costs, transferring the majority of the costs of the regulator from the government to the sector, with a potential

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<sup>1</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/474266/BIS-15-623-fulfilling-our-potential-teaching-excellence-social-mobility-and-student-choice-accessible.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/474266/BIS-15-623-fulfilling-our-potential-teaching-excellence-social-mobility-and-student-choice-accessible.pdf)

annual saving of £16-33m (based on estimates from 2018/19 set out in the Regulatory Impact Assessment<sup>2</sup>).

7. Plans in parallel to take forward Sir Paul Nurse's recommendation to a new Research funding body, which will bring together the seven Research Councils, Innovate UK and the research functions of HEFCE, will mean a significant simplification of the HE regulatory landscape, with the number of public bodies reduced from ten to two as an overall result of the reforms.

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<sup>2</sup> The estimates here do not take account any additional costs associated with running the Teaching Excellence Framework that will need to be developed in response to the technical consultation.

## 2. Strategic context

### Context: change in the sector

8. The Higher Education funding system in England has undergone significant change in recent years. Most notably, there has been a sizeable shift in the way Higher Education Institution (HEIs) are funded. Since 2011, the proportion of funding for teaching provided by direct grant from the Higher Education Funding Council for England (HEFCE) has declined significantly, while the share of funding from tuition fees has increased. In 2014/15, 90 out of 130 HEIs received 15% or less of their income as grant funding.
9. There is also growing diversity in the sector following reforms to increase competition and choice for students by enabling new and alternative providers to be designated as eligible for student loan funding. The regulatory system however has not been able to keep pace without changes to legislation and there are currently 123 alternative providers of higher education that have courses that are designated for student support but are outside the statutory remit of HEFCE. Under the current system, both HEFCE and BIS have responsibility for regulating different types of providers and due to legislation must operate different regulatory systems. Creating a single regulator for the whole sector which has the remit to operate a single system for all providers can offer significant simplification in standardising a fragmented regulatory system.
10. Given the student is now the primary funder of higher education, there is a case for a new regulator that is capable of regulating the whole sector and operating on behalf of the student by supporting a competitive environment to promote choice, quality and value for money. The existing regulatory system, that is built on a declining proportion of direct grant funding and that does not apply to all providers in the sector, is outdated and in need of reform, with a streamlining of the regulation under one body and a consistent set of conditions for all providers.

### The HE Green Paper and consultation 2015

11. The HE Green Paper 'Fulfilling our Potential: Teaching Excellence, Social Mobility and Student Choice' (Nov 2015) set out proposals to reshape the higher education landscape to have students at its heart. It stated core aims were to raise teaching standards, provide greater focus on graduate employability, widen participation in higher education, and open up the sector to new high-quality providers.
12. It included proposals for introducing a Teaching Excellence Framework to deliver better value for money for students, employers and taxpayers and plans to drive social mobility by further increasing higher education participation by those from disadvantaged and under-represented groups.

13. It consulted on proposals for:
  - A new single gateway for entry to the sector, which would create a common system for all providers
  - A new architecture for the higher education system, to reflect the way higher education is now funded primarily by students, and to reduce the regulatory burden on the sector
  - It also considered the potential implications of these changes for the research and innovation landscape.
14. The option of creating the Office for Students as a new body, to combine and update the regulatory functions of HEFCE and the role of the DFA, was a central part of the Green Paper proposals on architecture reforms. The formal consultation process ran from publication in November until mid-January. Responses indicated overall support for the new organisation with the main points focusing on ensuring a) a continuation of co-regulation on quality and data, b) protection for the remit and status of the DFA, and c) that there would be no erosion of sector independence and autonomy, and d) representation of the interests and views of stakeholders, within OfS decision making.
15. The proposed legal form and governance arrangements for the Office for Students set out in this case pays particular attention to these points: ensuring the body is sufficiently arms-length from government; will have diverse representation on the board; and will set out a distinct role on the OfS board overseeing clear lines of reporting for the integrated functions of the DFA within OfS structures.
16. The OfS will have oversight of the sustainability and health of the higher education sector, and as part of its role will monitor the sustainability of individual institutions. The OfS will deliver this through its checks on governance and financial sustainability on entry and through its annual monitoring of institutions (in the same way that HEFCE currently provides this function). This role will sit with OfS rather than UKRI as OfS will have oversight of all HE providers, including those who are teaching only. However OfS will have a statutory duty to share information with UKRI so that UKRI has sufficient visibility of the overall health of the sector.

## The case for a new regulator

17. HEFCE is currently the main public body with statutory powers and duties to regulate the higher education sector in England. It was formed under the Further and Higher Education Act 1992 at a time when the majority of public funding to universities was provided via direct grant payments rather than student finance and alternative provision did not receive public funding or regulation. It applies regulatory requirements as conditions of grant funding, relating to quality assurance, data and information requirements, and financial and governance assurance.
18. At a time when many providers now receive significantly reduced or no grant funding, HEFCE's regulatory levers are now weakened. In addition it has no powers to regulate alternative providers. Interim arrangements to attach similar regulatory

conditions to designation for student support for alternative providers have been managed within BIS. However this hybrid system with different conditions and access to different funding for different providers is not the preferred option for the longer term. With legislation and the creation of a new single regulator, it will be possible to run a simpler and more efficient regulatory system with a single regulatory framework for all providers. The alternative option of expanding the remit of the current regulator would not be sufficient to achieve the outcomes required, nor would it enable the simplification of the regulatory landscape to the same extent. A new body that has from the outset a focus on the student interest and introduction of new systems and priorities will be fundamental in driving forward effectively the proposed reforms and efficiencies.

## The case for merging HEFCE and OFFA functions

19. The Office for Fair Access (OFFA) is the independent regulator of fair access to higher education in England. It is the body set up to support the statutory duties of the Director of Fair Access (DFA), established in the Higher Education Act 2004. The DFA's remit is to agree and monitor access agreements with universities and colleges that charge higher tuition fees, to make sure that they have adequate measures in place to attract disadvantaged students. HEFCE also has a related remit to widen participation in HE and allocate funding to support this.
20. It is therefore proposed that the OfS should combine the existing regulatory functions of HEFCE and OFFA to integrate the funding and expertise of the two organisations and enable a coherent strategy for widening participation. This will ensure that widening participation receives an increased prominence in the core functions of the lead regulator and will enable it to be embedded as a priority in all relevant aspects of OfS's operations. A focus on access will be fundamental to the OfS's core remit of championing the student interest and a single regulator combining the powers, resources and knowledge currently spread across HEFCE and OFFA will mean a single body with access to a greater range of levers that can impact on access and success for disadvantaged students.
21. The merger would also enable greater efficiency through combining both statutory and administrative functions and would simplify the regulatory landscape by reducing the number of regulatory bodies. Further details are set out in sections 4 and 5 on the proposed governance and funding arrangements for OfS, with the proposed efficiency savings outlined in section 6 on costs and benefits.

## Interaction with other parts of the regulatory system

22. The Higher Education regulatory architecture is also supported by a number of other public and sector owned bodies with a core role in the system. These include:
  - The Student Loans Company (SLC): has a statutory UK-wide remit to provide loans and grants to students in HE providers in the UK, pay tuition fees to HE providers, and administer the repayment of student loans. It is a non-profit making, government-owned and funded executive NDPB, owned jointly by BIS and the Devolved Administrations (DAs) in Scotland, Wales and NI.

- The Office of the Independent Adjudicator (OIA): is the body set up to handle student complaints in England and Wales. It is a sector-owned body, funded entirely through provider subscriptions. The Higher Education Act 2004 required the appointment of an independent body to run a student complaints scheme in England and Wales and the OIA was designated by the English and Welsh governments to operate this scheme.
  - The University and College Admissions Service (UCAS): is an independent admissions service handling the application process for UK and international students applying to HE providers in the UK. It is a charity, funded by student application fees, provider subscription and commercially generated income.
  - The Quality Improvement Agency (QAA): A UK-wide sector-owned body, contracted by HEFCE to undertake statutory functions around quality assurance and funded by sector subscriptions with additional funding from HEFCE and DA funding councils.
  - The Higher Education Statistics Agency (HESA): A UK-wide sector-owned body, contracted by HEFCE to undertake statutory functions around data collection and statistics and funded by sector subscriptions with additional funding from HEFCE and DA funding councils.
23. The HE Green Paper proposed that the role and functions of the SLC, UCAS and OIA would remain distinct from the process of simplification and merger of functions. In each case there was a stronger case for these remaining separate than for merging them into the proposed OfS. These are set out in Annex C.
24. With regard to QAA and HESA, these are UK-wide sector-owned bodies which perform quality assurance and data gathering functions on behalf of HEFCE on a contractual basis. The Green Paper consultation sought views on how the OfS should exercise these functions in relation to these bodies, recognising the benefits of maintaining a co-regulated approach, the role that these bodies play in supporting wider decisions, (for example QAA in providing educational oversight on Home Office Tier 4 licence applications) and the UK-wide role that these organisations have. The options considered were:
- i. Incorporating the statutory regulatory functions within OfS's direct remit to deliver.
  - ii. Retaining a contractual relationship for the bodies to deliver functions on OfS's behalf.
  - iii. Designating bodies to deliver functions on OfS's behalf.
25. A new power for the Secretary of State to designate bodies to undertake quality and data collection functions on OfS's behalf if they have been recommended by OfS following OfS consultation on proposed nominated bodies. Responses to the consultation clearly favoured a continuation of co-regulation between the sector-owned bodies and the lead regulator (options ii and iii). There were concerns that option i would bring quality assurance too close to direct government control, in conflict with the long-held principles of maintaining sector independence and



institutional autonomy in the way that the sector is regulated. By contrast, the current system recognises that the sector, working through an independent agency, is best placed to define and review quality standards without government or the regulator taking an unduly prescriptive approach. We recognise the significant benefits of continuing with a co-regulated approach to quality and data collection, which enables us to ensure that independent sector expertise informs key aspects of standard setting and defining datasets. An additional consideration is that as the current quality and data bodies are private sector charities, we would have no claim on their existing assets, including information assets, so would risk losing all accumulated expertise and systems if we tried to replace them with a government controlled body.

26. Ministers have indicated that the preferred proposal is option iii, i.e. powers for OfS to designate appropriate bodies with the quality and information functions on the basis that formalising the arrangement in this way as opposed to via a contract will enable OfS to frame its relationship and agree core functions with those key partner bodies according to its new priorities and remit, whilst allowing the sector's role in co-regulation to be put on a firmer footing and ensuring that quality standard-setting and quality assurance remains at arms-length from Government. While some funding would be provided via OfS, the designated bodies would still be expected to generate their own income, e.g. through membership subscriptions or other activities and their governance would remain independent of central government. This mirrors the current operating model of QAA and HESA both in terms of governance and subscription income.

## **The statutory duties and powers of the new body**

27. In summary, to take forward the roles discussed above, the proposed legislation will give OfS statutory:
- Duties to have regard to promoting choice and competition (as a means of promoting the student interest) and in relation to protection for students.
  - Powers to operate a single entry gateway supported by a risk-based regulatory framework for all providers that imposes and monitors regulatory requirements as a condition of registration, including quality assurance and teaching excellence, widening participation, data and information, and the financial sustainability, management and governance of providers.
  - Powers to impose compliance measures on providers not meeting regulatory requirements imposed as a condition of registration. This would include powers to increase monitoring, issue notice and take proportionate action to support improvement, and ultimately, if required, impose monetary penalties or de-register providers. This will provide OfS with effective measures to regulate the whole sector, replacing the current regulation tied to government grant and designation.
  - Duties to determine the allocation of teaching grant funding to eligible providers in accordance with ministerial priorities and make the grant payments. This would include the funding of activities that support widening participation.

## 3. Consideration of options

### The need for the function or activity in question

28. The government intervenes in higher education because of: i) information asymmetries between students and institutions and insufficient demand side pressures to ensure quality; ii) the inability of students, in the quantities desirable for society and the economy, to finance higher education at the point of entry without support; and, iii) the broader benefits to society of having a highly educated population.
29. As a consequence, the Government needs to ensure that a range of functions are provided, such as regulating the entry of new providers to the sector, assurance of quality and financial sustainability, data gathering and sharing, and supply of loans. The Government also has a strong interest in ensuring students' rights are protected, and that people from all backgrounds can benefit from higher education. But for efficiency, and to protect institutional autonomy, it does not follow that the Government must provide all these functions directly.
30. The proposed expanded remit of the OfS to encompass regulation of all HE providers and bring together the statutory regulatory functions of HEFCE and the Director of Fair Access will enable the new body to carry out these regulatory functions effectively across the whole HE sector, in order to improve teaching quality, open up the higher education sector to new providers to increase choice and drive value for money. The alternative 'do nothing' option of not merging the statutory functions of HEFCE and the DFA would mean a weaker role for the lead regulator in taking forward its widening participation responsibilities and less simplification within the regulatory landscape.

### The need for central government to carry out the function or activity (as opposed to local government, the voluntary sector or the private sector)

31. Setting up a regulator as a non-departmental public body follows common practice in a number of other sectors for both commercial and publicly funded services, (e.g. OFGEM, OFSTED, OFWAT, Care Quality Commission). As a public body, the OfS will be subject to Treasury accounting, budgeting and propriety rules, as well as Cabinet Office requirements around transparency, and operational functions and regular reviews as part of the transformational programme.
32. The role which OfS will have in the assurance of registered providers is crucial for safeguarding public funds, as it will determine which providers can be designated for their students to be eligible for loan funding, and depending on the model of registration they opt for, grant funding as well. As more people access higher education with a student loan, the significance of that decision to the public purse also grows. It is essential that the body which makes such decisions be accountable to (and controllable by) Parliament, and therefore directly to the BIS Accounting Officer. Financial assurance issues with some HE alternative providers in recent years have highlighted the importance of this. If the OfS were a private sector body,

there would be no such direct relationship. This would also pose challenges for the role OfS will have in allocating public grant funding to providers for high cost subjects and other priority activities.

33. The Higher Education sector operates on a national (and international) basis with regard to student recruitment, rather than primarily at regional or local level. Student geographic mobility is high and it is appropriate and fair that English students are entitled to access the same systems of financial support, quality assurance, provision of information and protections regardless of where they live or where they apply to study. Oversight at national level of the regulatory and funding systems is required to ensure this. In considering whether the voluntary or private sector could be entrusted to carry out these functions, as discussed earlier the intention is to maintain co-regulation via the designation of sector-owned bodies around quality assurance and data collection functions. However the statutory duties to regulate in this area (even via designated bodies) would need to remain within a public body with powers to require HE providers to comply with regulatory demands. The body would need to take direction from the Secretary of State on high level policy. These duties and restrictions would not be appropriate for a private or voluntary sector body.

### **The need for a new NDPB to deliver the function or activity (as opposed to an existing NDPB or other type of public body)**

34. As set out above, there is no single existing NDPB or public body which has the remit to carry out the regulatory role required to champion student interests and hold a remit across the whole sector. Due to this need for the regulatory remit to be expanded and updated to enable a focus on the student interest, a merger of DFA functions and a sector-wide regulatory framework, HEFCE in its current form could not continue to exist under new legislation. In order to combine the regulatory functions of HEFCE with the powers of the DFA, in legislative terms this will in effect create a new NDPB structured around new principles and priorities that put the student interest at the centre of its operations and that will be better placed to take forward the intended reforms and enable the simplification of the regulatory landscape. It is therefore more accurate to describe the changes as creating a new NDPB replacing two former public bodies than a merger and expansion of two existing ones. Creating a new body is a logical step that conveys the changes to the remit and step-change in its focus as lead HE regulator and signals its change of focus.
35. Why an NDPB?
- The lead regulator is currently an NDPB. We have not identified any strong evidence to suggest that the proposed reform of the lead regulator's role requires a different type of public body. The need for reform centres on the scope of the regulator's remit and a need to refocus its priorities towards the student interest. It is not about changing the balance of independence between government and the regulator, which would be the implication of setting up OfS as a different type of public body.
  - Ministers have agreed recommendations that the new body should be set up as an NDPB, as opposed to a Non-Ministerial Department or Executive Agency, on

the basis that the characteristics of an NDPB are the best suited to enabling the regulator to perform its duties while maintaining an appropriate balance between ministerial direction and protecting sector independence.

- The body would need to be empowered to operate at arms-length from Ministers to retain the principles of academic freedom and institutional autonomy in the HE sector. An executive agency staffed by civil servants would bring its functions directly into the department which would not create a level of distance appropriate for the sector. An increased level of direct government control and interference is not the intended policy aim and will not be the most effective way to achieve reforms. It is preferable for the sector and central government to have an independent regulator to monitor and assess the performance of individual HE providers, using co-regulated approach with sector-owned bodies.
- It will however remain important for the regulator to retain a duty to take direction from the Secretary of State on high level policy and for the Secretary of State to retain powers to appoint the OfS Chair and member of the Board. As priorities in Higher Education evolve, it is essential that the relationship between central government and the regulator is sufficiently strong to ensure that the regulatory system is responsive to emerging priorities that need to be taken forward via the regulatory system to ensure quality and choice for students. It is therefore essential that ministerial direction can continue to shape the priorities of the regulator at a high level. A non-ministerial department would not allow such a direct relationship.

## Assessment of the function or activity against tests

36. Is this a technical function (which needs external expertise to deliver)?

- Partly. Some roles are similar to that of civil servants around the administration of governance and funds and analytical specialisms. The regulator will also need to employ sector experts to conduct assurance and gather data in compliance with its regulatory duties in areas requiring professional knowledge of operating in the HE sector - many of these roles would require specialist skills and expertise which are not held by central government staff.

37. Is this a function which needs to be, and be seen to be, delivered with absolute political impartiality (such as regulatory or funding functions)? Is this a function which needs to be delivered independently of ministers to establish facts and/or figures with integrity and credibility?

- Yes, keeping regulatory functions and data gathering at arms-length from government is vital, both for preserving the principles of sector independence and academic freedom in the HE sector, and for providing regulatory assurance, information and figures that are impartial and independent of government involvement. It would be inappropriate for central government rather than an independent regulatory body to assess and pass judgement on the performance and standards of individual HE providers.

## 4. Governance of preferred option

### Overview of proposed governance arrangements

38. As an executive NDPB, but not a Crown body, OfS would be an independent body governed without direct government representation on the board and staffed by its own employees rather than civil servants. The Secretary of State (SoS) would have powers to appoint the OfS chair, the CEO and all board members. Its functions would be set out in statute and it would have a duty to have regard for the Secretary of State's directions in exercising those functions, and would be fully accountable to government. Its sponsor department would be the Department for Business, Innovation and Skills and its accounts would be consolidated within BIS accounts. It would have a duty to keep proper accounts in line with government accounting rules, to submit annual statements of accounts and an Annual Report and it will be set up to adhere to the Principles of Good Corporate Governance and would be included within the government-wide tailored review programme. Further details of the proposed governance arrangements are set out in Annex A.

### Incorporating the functions of the Director of Fair Access into OfS governance structures

39. The policy intention is for the OfS to have functions relating to Access and Participation in the new HE landscape, with the DFA ceasing to exist as an independent officer and his functions being replaced by the new OfS functions.
40. The HE Green Paper consultation responses highlighted some concern about the disadvantages of ceasing to have an independent decision-maker with a single focus responsibility for Access and Participation. It is proposed that OfS will have specific duties to promote Access and Participation and will be accountable if these duties are not met. Accordingly, the OfS is expected to be sufficiently robust to maintain its strategic priorities with appropriate governance arrangements surrounding the discharge of Access and Participation functions within the OfS. We anticipate legislation will specify (or enable where not specified):
- A nominated executive board member of the OfS, appointed by SoS, with a title specified in legislation to ensure that Access and Participation is assigned a high profile within the structure and operations of the OfS.
  - The nominated Access and Participation executive (the 'Director for Fair Access and Participation') would be expected to oversee and take responsibility within the OfS for the discharge of its functions and duties relating to Access and Participation.
  - As a member of the board, the Director for Fair Access and Participation would be appointed by the SoS, and like the present DFA, he or she would be selected on the basis of suitable background, experience and personal profile to enable firm negotiations with HE institutions to promote Access and Participation activities in the sector.

- In practice, we would expect OfS Board to delegate to the Director for Fair Access and Participation day to day responsibility for operations and decisions relating to the OfS' Access and Participation functions.
  - OfS would also be free to employ dedicated OfS staff to support the executive in carrying out those functions and to allocate a certain budget to those activities, from within OfS's overall budget.
  - The Director for Fair Access and Participation would be expected to report to the OfS board regularly on Access and Participation activities, and to prepare (or oversee the preparation of) an annual report on Access and Participation activities on the OfS' behalf.
  - Also proposed is the appointment of additional non-executive members with relevant background experience working in the area of social mobility and/or Access and Participation to provide further support for the Access and Participation strategy within the OfS with criteria for appointments set out by the SoS under powers to determine the job descriptions and terms and conditions of board appointments
41. These governance arrangements will ensure that the Director for Fair Access and Participation is given particular status to highlight the continued importance of access and success for disadvantaged students while at the same time fully integrating the role of DFA into the OfS, establishing clear lines of reporting on widening participation through the OfS board. It will bring together the expertise and spending power of the two organisations to maximise the impact of effective strategies for increasing access to HE and enable the simplification of the regulatory landscape, realising greater efficiency through the merger of both the statutory and administrative functions of the two organisations.



## 5. Funding of preferred option

### Overview of funding arrangements for OfS

42. It is proposed that new legislation will enable the OfS to charge registered HE providers an annual registration fee towards covering its running costs, as is the case in many other regulated sectors. The exact charging structure will be set out in regulations following further consultation, but at this stage we would expect the registration fee charged to individual providers to vary according to the model of registration opted for and the size of provider. Differentiating by model of registration would enable the fee structure to reduce cross subsidy since it would link charges to the level of monitoring more closely. Differentiating by number of students would potentially involve a degree of cross subsidy common to other charging systems based on student numbers, to ensure fees are proportionate and do not create disproportionate barriers to entry for new and smaller providers on the basis of cost.
43. In addition to the main registration fee, OfS will have powers to make a limited number of additional charges for specific services and one-off processes that would not apply to all providers in a registration category. This might include for example applications for Degree Awarding Powers.
44. Proposed legislation will ensure that no charging plan or fee structure can be introduced without HM Treasury and Parliamentary consent. There would be significant scrutiny and challenge to drive efficiency in forecasting costs and ensure fairness in the fee structures.
45. To ensure against barriers to entry and support transition, the Regulatory Impact Assessment outlines the following areas where government funding might be used to supplement OfS's registration fee income.
  - Costs of regulating the new providers (those that entered in past 3 years): As set out above, there could be a pro-competition argument for the government to help meet new providers' regulatory costs in its early years (assumed here to be during its first three years). This would avoid cross subsidy between existing and new providers.
  - Funding for activities that have wider economic benefit: Beyond the direct regulatory functions, it is expected that OfS will be well placed to perform other functions, which would not directly benefit the providers, but would have wider societal benefits. Examples could include working with HE providers on Prevent; or conducting wider research on HE sector.
  - Transition costs: To support the transition to the new fee regime, there is expected to be government funding support in the first year of the new system.

## 6. Appraisal of preferred option

46. The following analysis of financial impacts should be regarded as indicative at this stage ahead of further more detailed work on the organisational design and implementation, and agreeing a charging structure in secondary legislation subject to HM Treasury consent. At this stage of planning prior to legislation it is too early to make final decisions on the operating model of OfS, so estimates reflect the fact that a number of its key cost drivers have yet to be determined.

### Benefits

47. In policy terms, the key benefits resulting from the creation of the OfS as a new public body are:
- Simplification of the current HE system architecture through merging the regulatory remits of two public bodies into one, enabling shared expertise and creating greater coherence on the regulatory approaches and allocation of funding supporting widening participation, and aligning with Cabinet Office strategic transformation of the public bodies landscape and BIS' own simplification and transformational agenda, 'BIS 2020'.
  - The creation of a body structured to deliver a greater focus on promoting the student interest through increased choice and competition
  - Empowering the lead regulator to have fit for purpose legislation that enables it to run a risk-based regulatory framework that is applicable to all providers in the sector.
48. In financial terms, Annex B, (based on figures in the Office for Students Regulatory Impact Assessment, May 2016), sets out the anticipated running costs of the OfS and the estimated amount of government funding that might be contributed towards the OfS on an annual basis. It estimates c.£28.6 million as the baseline cost of OfS, based on current expenditure on related functions (using estimates of operating costs of HEFCE and OFFA based on the most recent published accounts of the two organisations<sup>3</sup>), adjusted for an estimated 10% efficiency saving resulting from merging functions and the introduction of more efficient systems such as the risk-based regulatory framework. Adjusting for forecast RPIX inflation<sup>4</sup>, the expected operating cost for 2018/19 is then £30.9 million.
49. The estimated savings to the government are calculated on the basis of the total anticipated income from registration fees, an amount which, without reforms, would otherwise continue to be funded by the government:

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<sup>3</sup> HEFCE annual report and accounts 2014/15 <http://www.hefce.ac.uk/about/reportsaccounts/>

<sup>4</sup> OBR Economic and Fiscal outlook March 2016;



	2018 /19	2019 /20	2020 /21	2021 /22	2022 /23	2023 /24	2024 /25	2025 /26	2026 /27	2027 /28
Total registration fees	16.0	24.4	25.2	26.3	27.4	28.4	29.5	30.5	31.4	32.4

## Costs

50. In terms of the Government funding that might be required, the following table, based on assumptions set out in the RIA, sets out estimated costs that might be covered, with the remaining OfS operating costs being assumed to be covered by providers:

	2018 /19	2019 /20	2020 /21	2021 /22	2022 /23	2023 /24	2024 /25	2025 /26	2026 /27	2027 /28
Total government funding	14.9	8.0	8.8	9.4	10.2	11.0	11.9	12.7	13.7	14.8
New provider funding	1.9	3.0	4.2	3.5	3.9	4.3	4.5	4.6	4.5	4.4
Activities with wider benefits (see para.45)	4.8	5.0	4.6	5.9	6.3	6.7	7.3	8.1	9.2	10.3
Transition funding	8.2									

51. More explanation of what these costs could cover is set out in the RIA and in paragraph 45 above.

## 7. Transitional arrangements

52. As noted above, it has not been feasible to work with delivery partners to formulate detailed transitional planning ahead of the introduction of the HE and Research Bill. Workstrands are being developed to take forward transitional planning with partners on key areas to include:
- Communication with partner organisations
  - Organisational design
  - Staff transition arrangements
  - OfS Board appointments
  - Financial planning and budget transfers
  - IT, estates, procurement, and legal contracts
  - Delivery implications of transferring regulatory functions
53. There will be a dedicated operational planning team resourced within BIS, which will work closely with HEFCE, OFFA and other partners to plan transition and make arrangements ahead of formal appointments being made to the OfS to ensure that the necessary consultation, operational planning, supporting regulations and corporate systems and policies are in place to enable the OfS to assume its regulatory functions from the start of academic year 2018/19, subject to Parliament. The timeline of transition from HEFCE to UKRI and OfS will be fully aligned.
54. At the time of the Green Paper, HEFCE and OFFA staff were informed that the OfS would need to carry out some of the functions of HEFCE and would want to retain HEFCE and OFFA staff's knowledge and experience. To ensure that their longstanding expertise is not lost, appropriate transitional arrangements will be put in place and normal legal protections will apply. As we take forward the plans outlined in the White Paper, HEFCE and OFFA staff will be briefed on our plans and we will commit to provide regular updates as the work progresses.

## 8. Conclusion

55. The proposed reforms to the regulatory architecture are an integral part of the vision for Higher Education set out in the Green Paper. The key aims confirmed in the White Paper – creating a competitive market, choice for students and updating the regulatory architecture – are all contingent on a strong regulatory body with a statutory remit that is fit for purpose to introduce a single regulatory framework for all providers, creating a level playing field that enables greater competition, and that is updated to reflect the important shift in focus towards the student interest.
56. The proposal for creating the OfS is further supported by the case for simplification of the regulatory landscape, a reduction in the number of public bodies, efficiency savings resulting from the merger of two organisations, the additional benefits to widening participation through bringing together the funding and expertise of two organisations and embedding it as a priority within the statutory powers and governance of the lead regulator.

# Annex A: Overview of proposed governance arrangements for OfS, (subject to Parliament)

## 1. Chair, Chief Executive and Board:

- 10-15 members including Chair and CEO.
- SoS to appoint and set terms and conditions for all members, (Chair, CEO and board).
- Through setting terms and conditions of appointments, SoS to retain the right to remove CEO and members.
- Board appointments must have regard to the desirability of a range of experience on the board reflecting OfS's priorities, i.e. the diversity of the sector's institutions, championing the student interest, fostering choice and competition, employing HE graduates, and experience of regulation and financial control.

## 2. Staff

- OfS board to appoint staff, and, subject to SoS and HM Treasury consent, determine remuneration, allowances, terms and conditions. The expectation would be that these were in line with public sector pay arrangements.

## 3. Committees & Proceedings

- Board can establish committees and determine membership and terms and conditions.
- Board can delegate functions.
- Half of members required for Board to be quorate.
- SoS power to request Board and Committee documents and to appoint a representative to attend Board and Committee meetings.

## 4. Accounts and reporting

- OfS duty to keep proper accounts in line with government accounting rules and produce and submit annual statements of accounts and an Annual Report.

# Annex B: Extracts from OfS Regulatory Impact Assessment setting out estimated costs

## Provisional estimates of OfS anticipated running costs

1. The Regulatory Impact Assessment estimates the expected operating costs of OfS to be at ~£30.9 million in 2018/19.
2. This is based on a calculation which estimates £31.6 million in 2014/15 as the baseline for the cost of OfS, based on current expenditure on related functions. The costs are expected to rise each year in line with economy-wide inflation (RPIX). Once created, the assumption is that OfS is likely to generate cost savings, stemming in part from the merger of functions and in part from the move to a more risk-based, efficient regulatory framework.
3. At this point, further design work needs to be carried out to accurately estimate the difference in costs between creation of OfS and a “do nothing” scenario (i.e. without a merger of HEFCE and DFA functions), since key parts of the system which are expected to deliver efficiency such as the risk-based regulatory framework are not due to be developed until later in the reforms process.
4. The central assumption in this impact assessment is that a 10% efficiency saving will be achieved relative to baseline operating costs. This means that estimated operating costs are £28.6m for 2018/19, or £30.9m adjusted for inflation, as illustrated in Table 1 below (based on the assumptions on the number of providers in the new system used across all Impact Assessments in the 2016 HE Bill).
5. It is expected that operating costs will increase over time as the number of providers in the regulated sector rises. This is reflected in Table 1, with costs rising over time due to (i) increase in number of regulated providers and (ii) inflation.

**Table 1: Estimated operating costs of OfS**

	2018 /19	2019 /20	2020 /21	2021 /22	2022 /23	2023 /24	2024 /25	2025 /26	2026 /27	2027 /28
Total designated providers <sup>5</sup>	478	495	513	533	554	577	599	620	640	659
Operating cost of OfS, £million	30.9	32.5	34.1	35.7	37.6	39.4	41.4	43.3	45.2	47.2

#### Split between costs covered by sector and the government

6. As outlined above, the costs are expected to be split between government and the sector, subject to the outcome of consultation. Below we estimate the costs that might be covered by the government, with the remaining OfS operating costs being assumed to be covered by providers.
7. The three key parts of cost that might be funded by government in the new system are:
- Costs of regulating the new providers (those that entered in past 3 years)
  - Funding for activities that have wider economic and societal benefit.
  - Transition costs
8. The total estimated cost of these is set out in Table 2.

**Table 2: Estimated split between costs covered by sector and the government**

	2018 /19	2019 /20	2020 /21	2021 /22	2022 /23	2023 /24	2024 /25	2025 /26	2026 /27	2027 /28
Total government support	14.9	8.0	8.8	9.4	10.2	11.0	11.9	12.7	13.7	14.8
New provider support	1.9	3.0	4.2	3.5	3.9	4.3	4.5	4.6	4.5	4.4
Activities with wider economic or societal benefits	4.8	5.0	4.6	5.9	6.3	6.7	7.3	8.1	9.2	10.3
Transition funding	8.2									
Total registration fees	16.0	24.4	25.2	26.3	27.4	28.4	29.5	30.5	31.4	32.4

<sup>5</sup> BIS forecast, based on the most recent data on number of Higher Education Providers. The forecast looks at the current structure of the HE sector, and applies a set of assumptions about how individual HE providers will respond to the reforms. A full forecast can be found in Annex A of the BIS (2016) "Higher Education and Research Bill Impact Assessment".

9. For the purposes of estimating the costs of regulating new providers it is assumed that cost to OfS of regulating a provider is the same irrespective of size and experience. A distinction is made between “Approved” and “Approved (fee cap)” providers, as only “Approved (fee cap)” providers will require access agreements. Based on that, the average cost of regulation is estimated at £61,400 for “Approved” providers and £62,400 for “Approved (fee cap)” providers.
10. The numbers for providers that enter within 3 years of the current academic year are extracted from the same provider number forecast model as overall figures<sup>6</sup>. This includes both providers that are completely new and those that were not designated for student support previously. It is expected that the number of new providers entering the system will be higher in the first 4-5 years of the new system, and stabilise afterwards. Table 3 below provides an illustration of potential government support for covering OfS costs of regulatory new providers.

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<sup>6</sup> Methodology behind provider numbers explained in the technical note on provider number forecast, used throughout all HE Bill Impact Assessments.

**Table 3: Potential government support for covering OfS costs of regulatory new providers**

	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28
“Approved” providers, entering in that year	22 <sup>7</sup>	11	12	14	15	16	15	15	14	14
“Approved” (fee cap) providers, entering in that year	9	5	5	6	7	7	7	7	7	6
Cumulative Approved (up to 3 years) <sup>8</sup>	22	33	45 <sup>9</sup>	37	41	44	46	46	45	43
Cumulative Approved (fee cap) (up to 3 years)	9	14	20	16	18	20	21	21	21	20
Cost of regulation Approved	£61,400	£62,400	£63,300	£64,200	£65,000	£65,600	£66,400	£67,300	£68,200	£69,200
Cost of regulation Approved (fee cap)	£65,400	£66,400	£67,200	£68,000	£68,700	£69,300	£70,000	£70,800	£71,600	£72,500
Total government support for new providers, £million	1.9	3.0	4.2	3.5	3.9	4.3	4.5	4.6	4.5	4.4

<sup>7</sup> Only includes those that enter that year at “Approved”; and were previously not regulated or had a “Registered” status.

<sup>8</sup> Cumulative figures are a sum of the providers entering in the last three years. Forecast numbers are fractional so may not sum up exactly,

<sup>9</sup> 22+9+10=41



## Annex C: Other key parts of the HE system and the rationale for these remaining outside the OfS

The HE Green Paper proposed that the role and functions of the SLC, UCAS and OIA would remain distinct from the process of simplification and merger of functions. In each case there was a stronger case for these remaining separate than for merging them into the proposed OfS:

- In the case of the SLC, the functions are distinct, based around the administration of funds, and interacting primarily with students directly, without any significant overlap of functions with the regulator, which by contrast will be primarily interacting with providers on behalf of the student interest and concerned primarily with standard setting and monitoring. So there would be few obvious efficiency gains to realise by bringing the functions of the organisations together. In addition, there is a discrepancy in the extent of the statutory powers for each organisation, with SLC operating on a UK-wide remit whereas the OfS remit will be limited to England only, so it would not be feasible to amalgamate the entire SLC function within OfS, further limiting any potential efficiency gains.
- In the case of the OIA, good practice dictates that the ombudsman role should ideally be kept separate from that of the regulator to maintain independence. Current legislation deliberately places a requirement on government to designate a separate body to handle complaints in order to maintain its independence and prevent any potential conflicts of interest if the function was brought within the direct remit of the regulator. The OIA as it stands is not a government owned or government funded body – it would therefore be neither deregulatory nor efficient to bring into government control a function which is currently paid for and managed effectively by the sector itself.
- In the case of UCAS, this is a sector owned body which functions effectively outside of government control, again without any significant overlap in functions with government bodies. In the interests of sector independence, there is a deliberate distancing of government from the applications process. There is also has a mismatch of remit – compared to OfS's focus on a system for all HE providers in England only, UCAS operates across the UK, facilitates post-16 education applications as well as HE, and is not used universally by all HE Providers or for all HE provision. So there was no clear rationale on the basis of either efficiency or deregulation for expanding the role of the regulator to bring this function within direct government control.



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**BIS/16/292**