



Department  
for Education

# **Higher Education and Research Bill**

**Factsheet on Degree Awarding Powers  
and University Title**

**January 2017**

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## Introduction

In the BIS White Paper “Success as a Knowledge Economy: Teaching Excellence, Social Mobility & Student Choice”, we set out our plans to enable greater competition in higher education by simplifying the regulatory landscape.

In September we published a technical note to the Higher Education and Research Bill on Market Entry and Quality, which provided more detail on the new risk-based regulatory framework.

The processes around the granting of Degree Awarding Powers (DAPs) and University Title (UT) form part of this regulatory framework. This note is focussed on degree level *taught* Degree Awarding Powers <sup>1</sup> and sets out in more detail how we expect these processes will work in the new system, and should be read alongside the Technical Note on Market Entry and Quality.

The detail of the proposed changes to DAPs and UT processes and accompanying criteria will be set out in new DfE guidance which DfE intends to consult on in due course. The OfS will need to have regard to this guidance.

Please note that these changes apply to processes in England only. For guidance on DAPs and UT in Scotland, Wales and Northern Ireland please refer to the guidance on the Quality Assurance Agency’s [website](#).

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<sup>1</sup> Unless stated otherwise, for the purpose of this note “Degree Awarding Powers” refer to the powers to award taught degrees at level 6 or above. The rules and processes for Foundation and Research Degree Awarding Powers are similar, but differ in some points of detail.

# Regulating access to DAPs and UT

## 1. Current system:

### DAPs

Organisations in England providing higher education at an appropriate level, whether publicly funded or not, are entitled to apply for DAPs.

The Privy Council is responsible for granting DAPs and does so on the advice of DfE who maintains the [published criteria](#) against which applications are considered. These are published criteria but are not statutory. The overarching requirement for Degree Awarding Powers is that ‘an institution needs to be a self-critical, cohesive academic community with a proven commitment to quality assurance supported by effective quality and enhancement systems’. For taught DAPs, applicants should normally be able to demonstrate that they:

- Have had no fewer than four years consecutive experience, immediately preceding application, of delivering HE programmes at a level at least equivalent of level 6 of the HE framework ( the “track record” requirement).
- Normally have the majority of their HE students on programmes at level 6 or above.

The Privy Council is responsible for granting Degree Awarding Powers under the current system. Although the OfS will take on this responsibility under the new regime, we intend that applicants will be tested under specific criteria along similar lines to the existing criteria and that these will continue to be set out in departmental guidance. The OfS will need to have regard to this guidance.

The entire process to reach full DAPs takes on average at least 5-7 years under the current arrangements.

For more information on the current system see **Annex 4**.

## University Title

At present, any provider with Taught Degree Awarding Powers can apply for University Title.<sup>2</sup> The detailed criteria providers need to meet are set out in [departmental Guidance](#). As with DAPs criteria, these are not statutory. These are:

- **Holder of Taught Degree Awarding Powers**
- **Good Governance criteria:** this includes criteria relating to quality, academic standards and performance, financial sustainability, management and corporate governance.
- **Overall student numbers criterion:** at least 1,000 full time equivalent higher education students, of whom at least 750 are registered on degree courses.
- **Proportional student numbers criterion:** the number of full time equivalent higher education students must exceed 55% of the total number of full time equivalent students.

Providers that meet the good governance criteria only, but not the two student numbers criteria are eligible for University College Title.

There are different routes for approval depending on a provider's status and method of incorporation. Generally speaking, HEFCE funded providers can obtain approval via the Privy Council, whereas Alternative Providers get permission for the use of 'University' in a company name via the Companies Act 2006. The detailed criteria for both are the same. In both cases, HEFCE assesses applications and provide advice to the department, who then in turn provides advice to the relevant decision maker.

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<sup>2</sup> This applies even if Degree Awarding Powers have been granted on a time-limited basis.

## 2. New system:

### DAPs

Our reforms are aimed at removing unnecessary barriers that may currently stand in the way of providers that can demonstrate that they have:

- the ability to design and deliver high quality HE degree courses,
- the ability to set and maintain academic standards, and
- their teaching is informed by scholarship and research.

#### **Impact on current DAPs holders**

We envision a system whereby all current institutions with DAPs and UT are registered and subject to the regulatory oversight of the OfS. We expect these providers to be registered in either the Approved, or Approved (Fee Cap) categories.

The process of registration will not affect the continuing validity of any existing DAPs orders made under the Further and Higher Education Act 1992, nor those made under Private Acts or Royal Charter. Existing DAPs holders will not need to reapply for DAPs.

However powers to vary and revoke Degree Awarding Powers apply to all institutions, no matter how they have obtained their powers.

## Types of DAPs

The planned reforms will mean that providers can choose which of the following routes for accessing DAPs fit their circumstances:

- Providers with a track record can apply for full DAPs, as now, either at foundation<sup>3</sup> or taught level;
- Those without a track record will be able to access DAPs more quickly than is possible under the current system by doing so on a **probationary basis**. However, we expect that only high quality providers will be able to meet the anticipated entry level tests for probationary DAPs,<sup>4</sup> and will need to demonstrate strong evidence that they are in a position to proceed to full DAPs within three years.
- Some providers may be attracted by the possibility of applying for powers on a more limited basis than is currently the case by obtaining those powers at **Bachelor level only or on a subject specific** basis.
- In order to obtain full DAPs (i.e. not probationary) of any type, we intend that the provider will first need to demonstrate a three-year track record<sup>5</sup> of delivering higher education.

The following table gives an overview of DAPs available for taught awards of level 6 or above:

DAPs	Probationary	Full (time-limited)	Full (indefinite)
	- Subject specific & Bachelor level only		
	- Subject specific & up to taught Masters level		
	- All subjects – Bachelor level only		
	- All subjects – up to taught Masters level		

<sup>3</sup> For providers in the Further Education Sector only.

<sup>4</sup> Please see page 25 for some examples of the types of providers we would expect to access probationary DAPs.

<sup>5</sup> Reduced from the current four year track record requirement.

## Eligibility and criteria

We intend that there will be strict eligibility requirements for all applicants (i.e. for both probationary DAPs and full DAPs). In order to be able to apply for any DAPs we expect a new provider to be registered in either the Approved or Approved (fee cap) categories of the register. By the time they apply for DAPs, they must therefore meet the set of baseline regulatory requirements which we expect to mirror current requirements including: the UK quality code, the Frameworks for Higher Education Qualifications of UK degree awarding bodies, financial and sustainability and good governance and management criteria.<sup>6</sup> New providers seeking probationary DAPs may apply at the same time as applying to become registered. Providers who are already registered and meeting the ongoing requirements for registration may also make an application for DAPs, including probationary DAPs.

In addition, as now, we expect applicants to be required to have the majority of their HE students on study programmes at level 6 (or above) of the Frameworks for Higher Education Qualifications.<sup>7</sup> We expect the OfS to set out the approach it will use to identify the ‘institution’ and legal entity that is seeking DAPs, together with the way in which this assessment will inform any calculation used to determine whether the applicant meets the criterion for the ‘majority’ of HE students to be studying at level 6 (or above).

The specific criteria that a provider would be required to meet are expected to look broadly similar to now, including the ability to form a cohesive, self-critical academic community. However, to reflect the different DAPs:

- The criteria are expected to be tailored to include specific conditions that will be applicable for the new types of powers – i.e. probationary, bachelors and single subject. As now, we expect the assessment process to focus on the ability of the provider to set and maintain academic standards, and for the OfS to seek information and advice from the designated quality body on these matters. We intend that the scrutiny process will continue to contain elements of peer review; and,
- The nature of the evidence required will reflect the nature of the DAPs a provider is applying for. For example, for those applicants seeking probationary DAPs, we intend that they will be assessed against their readiness to operate DAPs. We expect them to be tested to determine whether they are likely to be able to set and

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<sup>6</sup> The detail on what this entails is set out in the Technical Note on Market Entry and Quality Assurance.

<sup>7</sup> This does not apply for Foundation Degree Awarding Powers.

maintain UK agreed academic standards for their HE qualifications, and for them to be required to agree appropriate probationary plans with the OfS that will be monitored through the probationary period.

As now, we expect to set out the criteria and detail of all these processes in departmental guidance.

## **Process**

The decision making process will differ slightly from the current system in that the final decision on whether to grant DAPs will be made by the OfS rather than by the Privy Council. The intention is to speed up and streamline the process for applying for DAPs. We intend that in future the OfS will make these decisions in a similar way to how the Privy Council operates at present – having regard to departmental guidance and based on independent expert advice.

As with the current system, we expect that providers will be expected to pay for the costs of the DAPs assessment and scrutiny process.

It is our intention that any provider with full DAPs, including at Bachelor only or in single or limited subjects, but excluding Foundation DAPs, will be eligible for University Title. This is provided that they meet the criteria for UT and have successfully operated with full DAPs, i.e. made awards in their own name, for three years, subject to further review.

Further information on the new types of DAPs is set in **Annex 1** (Probationary DAPs) and **Annex 2** (Bachelor and Subject Specific DAPs).

## Time Limited DAPs

Under the current system, some providers get indefinite DAPs in the first instance and others on a time-limited and renewable basis. Foundation Degree Awarding Powers and taught DAPs for alternative providers are currently awarded on a time limited basis. This means that any provider that cannot maintain standards will face the prospect of non-renewal of their awarding powers. However, publicly funded higher education providers who are granted Degree Awarding Powers receive those powers on an indefinite basis. So they are not automatically presented with the need to renew their DAPs.

The intention is to level the playing field so that under the new system all providers who obtain full DAPs of any type (including foundation or research DAPs) will do so on a time limited basis in the first instance, but with the opportunity for all to progress to indefinite DAPs subject to satisfactory performance. This will not affect providers who already hold indefinite DAPs. Providers with time limited DAPs who have already successfully operated with DAPs for three years or more at the time the new regime comes into effect will also be able to seek indefinite DAPs.

After three years of operating with full DAPs, the provider is expected to be subject to a review OfS' routine which, if passed, would enable access to indefinite, i.e. not time-limited, DAPs.

Upon award of indefinite DAPs, a provider should be eligible to apply for University Title.

## University Title

### Eligibility criteria

We want to retain the current structure where legislation confers powers, and detailed requirements and criteria are set out in departmental guidance. We therefore plan to issue new departmental guidance setting out future criteria. We propose criteria along the following lines:

- **Holder of indefinite Degree Awarding Powers<sup>8</sup>:** As now, we want only those providers with full Degree Awarding Powers to be eligible for University Title. However under our plans only registered providers with Approved or Approved (fee cap) status those have achieved full and indefinite powers to award degrees at level 6 or above will be eligible. This means they must have successfully operated with Degree Awarding Powers, i.e. made awards in their own name, for three years, and have passed a review before becoming eligible.
- **Good governance criteria:** we expect registration conditions to be designed to include such criteria, and providers will therefore have to have met these already by the time they become eligible for University Title. It is therefore unnecessary to retain this as a separate criterion, although we do expect the OfS to draw on relevant information it holds as part of its regulatory functions.
- **Student numbers criteria:** We plan to remove the overall student numbers criterion for University Title, but retain the requirement that more than 55% of students are studying higher education. This is because the overall numbers criterion can be a barrier preventing smaller and specialist, high quality institutions from being able to benefit from the prestige that comes from being a university. HE providers are increasingly diverse, and setting such a cap – no matter at what level - could exclude some high quality providers. The strength of an academic community is not determined by its size – in fact, historically some prestigious universities have grown from very small institutions. Under our plans, providers will have shown as part of the application process for DAPs that they have a strong and cohesive self-critical academic community. Together with the proportional student numbers criterion this would ensure that universities will continue to have a critical mass of HE students, and can offer the academic experience associated with a University.

In line with past practice, we intend to consult of the detail of this guidance prior to publication.

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<sup>8</sup> This includes Bachelor only, or single/limited subject DAPs, but excludes holders of Foundation Degree Awarding Powers only.

As now, we intend to keep University College Title for those who cannot meet the 55% student numbers criterion, or anyone who might prefer it.

## **Process**

The main change in the new system will be the way in which University Title will be granted. As set out above, the Privy Council can only approve University Title for some providers. In future, the OfS will be able to grant University Title for all types of providers – including alternative providers. This will help create a level playing field for all providers, and help drive competition and student choice.

We intend that the OfS will in future make these decisions in a similar way as the Privy Council does now – having regard to guidance issued by the department, and based on information available to it as the regulator.

This does not replace any requirements for consent under the Companies Act 2006, however we do expect all English higher education providers to obtain OfS consent. Where a provider requires a non-objection letter to register a new company or business name that includes the word 'University' with Companies House, the intention is that the OfS will issue such a non-objection letter at the same time as granting University Title.

## Future Processes

Figure 1 – DAPs & UT via track record:

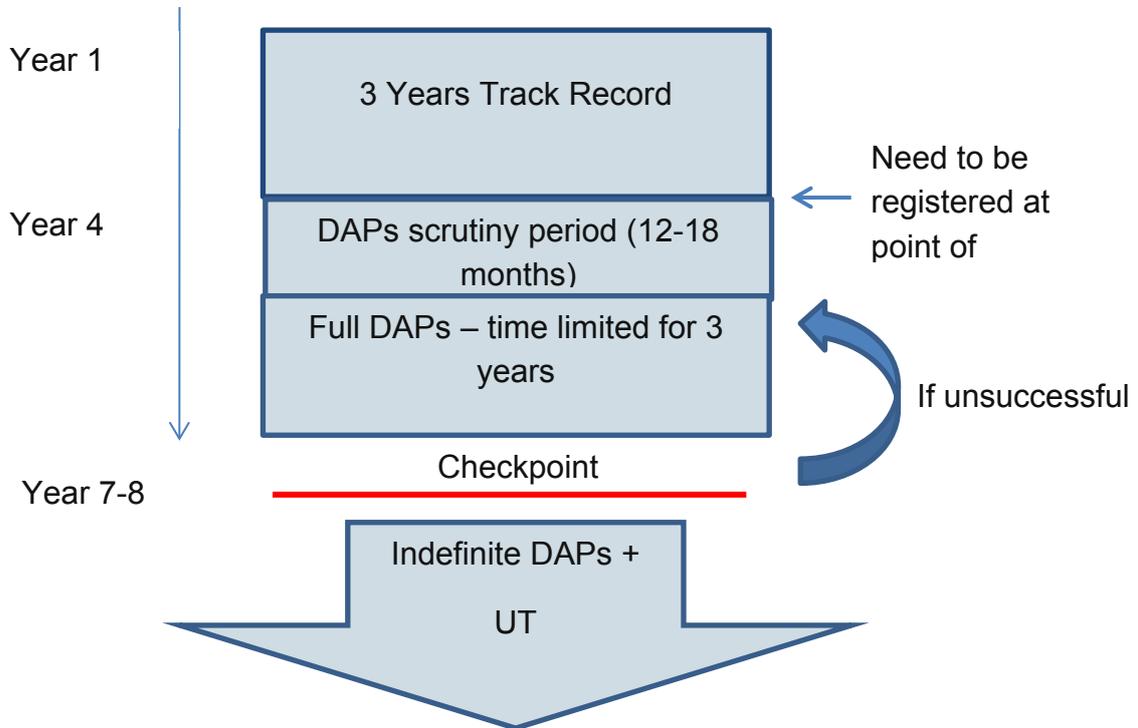
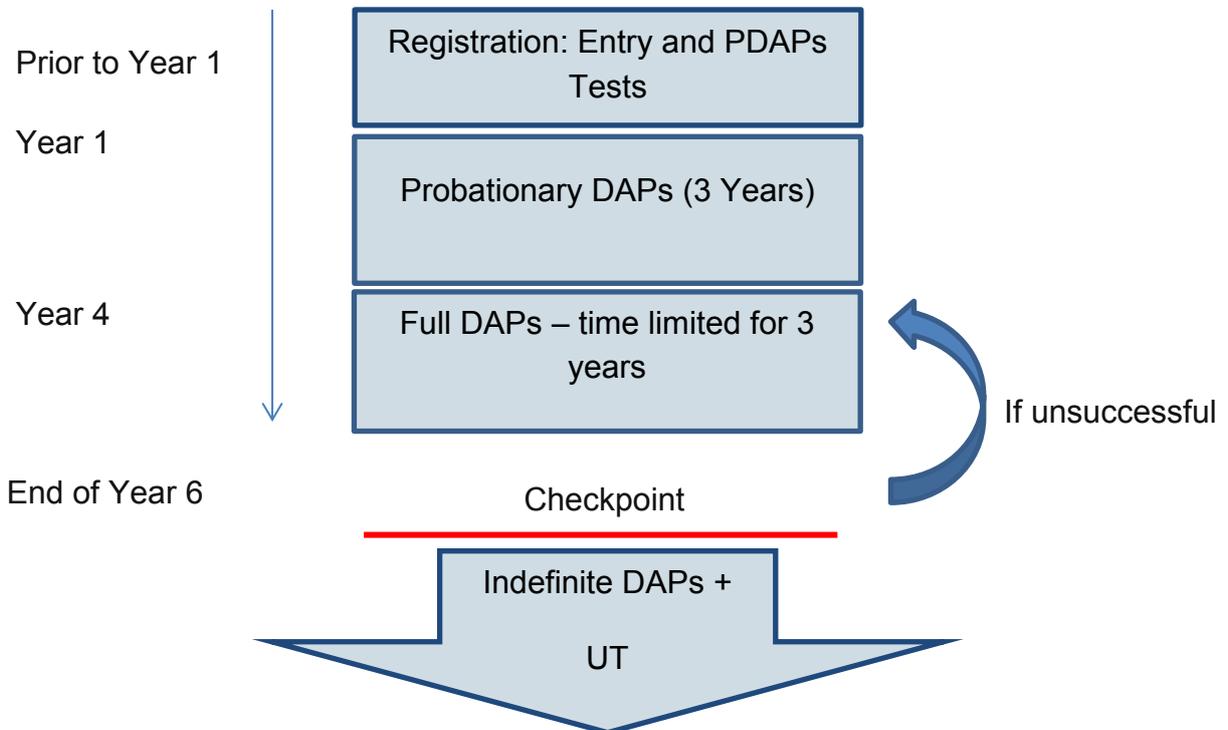


Figure 2 – DAPs & UT via probationary DAPs:



## Revocation and Variation

Our reforms are creating a new, market driven system, which will be underpinned by a risk-based regulatory framework, to replace the current, outdated system. It is therefore important that the OfS has the necessary tools at its disposal to regulate the sector effectively, and ensure that standards are maintained, and students are protected. This system would be undermined if a provider was unable to set and maintain standards or if the quality of its provision were to drop to an unacceptable level and yet it could continue to award degrees or call itself a university. This would be to the detriment of not only the students studying there, but to prospective students who have a right to expect that a provider offering its own degrees or calling itself a university, is maintaining recognised standards and delivering a high quality provision.

The refined, express powers to revoke DAPs, and to revoke University Title are therefore a vital part of the suite of tools available to the OfS under the new regulatory framework. They help ensure effective regulation and make it clear to providers what is at stake if academic standards are not protected and/or the quality of provision drops to unacceptable levels.

As our reforms are designed to level the playing field among different types of providers, these OfS powers will apply to all institutions – no matter how or when they have obtained their DAPs or UT. This is designed to ensure that the ability to protect standards and maintain quality is decisive, and not based on age or form of incorporation of the provider. Powers to vary or revoke apply equally to all types of DAPs, i.e. foundation, taught, and research DAPs.

**These powers are intended to be used only in very serious circumstances and only if other interventions have failed to produce the necessary results.**

We intend that the OfS and the designated quality body will work with providers to address any emerging problems early on, and a removal of DAPs and/or University Title is therefore likely to be a rarely used, but necessary safeguard to protect standards and maintain quality in the system.

Further information is set out in Annex 3.

## Student Protection

One of the key drivers behind the regulatory framework is to protect students at every juncture of a provider's journey into, and if necessary, out of the new regulatory framework. This includes cases where it may become necessary to remove DAPs and/or UT.

This is why all providers that are registered in the Approved or Approved (Fee Cap) categories- including those that hold DAPs and University Title – are expected to be required to have a student protection plan approved by OfS. This includes providers with probationary as well as full DAPs. This plan will include mechanisms to ensure that students can complete their courses and be awarded their degrees should their provider lose its DAPs.

The detailed provisions in student protection plans may vary from provider to provider, but are expected to ensure that affected students are able to continue their studies towards a degree and are protected if their provider is not able to deliver their course or award their degree. Plans must be approved by the OfS, and we expect requirements to differ based on the provider's risk profile. Plans may include:

- Measures enabling affected students to be compensated financially;
- teaching out a course for existing students, with DAPs being revoked once this is complete, and awards have been made to students
- teaching out of existing students and award of degrees by another provider;
- offering students an alternative course at the same institution; or
- making arrangements for affected students to switch to a different provider and obtain their degree without having to start their course from scratch.

In the event that there are insufficient teach-out options available to meet such student protection requirements, the OfS could use its powers to enter into commissioning arrangements, or act as a validator of last resort itself, to supplement the market. This would help ensure that students are adequately protected, and can be taught out and obtain their degrees in the event that their provider were to lose their DAPs.

The planned probationary DAPs test is designed to ensure that only those providers that have the potential to proceed to full DAPs within the three years have access to probationary DAPs. We therefore expect the vast majority of providers to proceed to full DAPs, with student protection plans providing additional reassurance in the rare circumstances where a provider may not proceed to full DAPs.

In addition, we plan for the OfS register to provide a list covering most current and past Degree Awarding Power holders, which will ensure students do not face difficulty in pointing to a clear and easily accessible record to prove the value of their degrees if their provider ceases to exist. The fact that all DAPs orders and orders to revoke DAPs and

UT will be statutory instruments which can be published will also help increase transparency and inform student choice.

We also expect the OfS to set-up a service to verify individuals' degree attainment and degree certificates from registered or formerly registered providers and that this would be more comprehensive than services currently available. Such a service would help ensure that students can prove their academic achievements to prospective employers even if their provider no longer exists.

## Annex 1 - Probationary DAPs

The proposal for “probationary” DAPs (PDAPs) will allow high quality institutions to award their own degrees more quickly than now but on a monitored basis, and with restrictions. It is designed to enable access for institutions without a track-record, however any provider that can meet the criteria will be eligible. Under these proposals we intend that:

A provider may apply for different types of probationary Degree Awarding Powers:<sup>9</sup>

- Bachelor (including subject specific)
- All Taught (i.e. taught awards of level 6 or above, including subject specific)<sup>10</sup>
- Foundation (including subject specific)<sup>11</sup>

In doing so, the provider will need to:

- Pass the entry level test and become registered in either the approved or approved (fee cap) categories<sup>12</sup>
- Have or intend to have the majority of its HE students on programmes at level 6 or above, i.e. equivalent to bachelor level, or level 5 or above (for foundation DAPs only)
- Pass a probationary DAPs test
- Undergo monitoring and scrutiny

As indicated above, we expect the OfS to set out the approach it will use to identify the ‘institution’ and legal entity that is seeking DAPs.

For new providers, the probationary DAPs test will take place at the same time as the Entry Review.<sup>13</sup> This will test the provider’s readiness to enter the probationary period and operate DAPs. Broadly, this process would seek to:

- determine whether a provider is likely to be able to set and maintain UK agreed academic standards for its HE qualifications (in line with present criteria for DAPs);
- set appropriate probationary plans – expressed as specific conditions for DAPs that will be monitored through the next three years.

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<sup>10</sup> Taught includes everything on the FHEQ up to level 7 Taught Masters.

<sup>11</sup> For providers in the further education sector only.

<sup>12</sup> Details of this entry test or baseline review are set out in the Technical note on Market Entry and Quality Assurance. We would expect holders of probationary DAPs to at least partially satisfy the entry criteria.

<sup>13</sup> See flowcharts on page 12.

The expectation is that the OfS would ensure that the test of an applicant's Financial Sustainability, Management and Governance that takes place as part of the Entry Review would also cover issues that are equally relevant to DAPs, such as quality and appropriate financial resources. This test should also entail ensuring that the provider had understood and planned for the resources necessary to set and maintain academic standards. We expect the OfS to consider evidence collected as part of the entry review as well as the PDAPs test to gain a holistic picture of the applicant's suitability.

The pre-requisites and eligibility criteria for PDAPs are designed to deter weak, ill-prepared, applications as it will soon become evident that an applicant is unlikely to meet the initial tests.

A provider with probationary DAPs will need to undergo full scrutiny for full DAPs during the probationary period.

### **The probationary DAPs Test**

The inclusion of a probationary DAPs test in the process would enable a developmental element in the probationary period through focused monitoring. This would maximise the likelihood of probationary DAPs holders proceeding to full DAPs and thereby mitigate the risk to students and HE reputation of institutional failure or withdrawal at the end of the probationary period. This test would assess the provider's understanding of what holding DAPs entails, and would be based largely on an assessment of the provider's probationary DAPs plan that has been agreed with the OfS. This is in addition to the Entry Review, as set out above.

### **The Probationary DAPs Plan and Initial Assessment**

Under our plans, applicants would be required to conduct a critical self-analysis and to submit full details of its academic plans covering the proposed start and end dates of the probationary period. The submission should include a 'probationary plan', prepared by the applicant. The probationary plan sets out, against the DAPs criteria what the provider already has in place, and the timescales and accountability for specific actions and developments during the probationary period.

The plan should include the proposed (or actual, if track record exists) approach to the management of academic standards and the plans, preparations and procedures in place to enable expectations to be met. We expect this to be based broadly on the current DAPs criteria (academic governance and academic management; academic standards and quality assurance; staff; environment) but rather than expecting evidence of existing practice we expect the OfS to ask for and test the provider's proposals.

### **PDAPs - How criteria compare to current taught DAPs criteria:**

We intend to consult on the detail prior to publishing guidance on PDAPs processes and criteria.

However, we envisage that while the criteria for PDAPs will look broadly similar to the full DAPs criteria, these will be tailored as appropriate to fit with the circumstances of a PDAPs applicant. For example (Evidence Criterion B”):

- i. *Evidence its higher education awards are offered at levels that correspond to the relevant levels of the Qualification Frameworks;*
- ii. *the management of its higher education provision takes appropriate account of the Quality Code, characteristics statements; credit frameworks; relevant subject benchmark statements; and the requirements of any relevant professional and statutory bodies;*
- iii. *in establishing, and then maintaining, comparability of standards with other providers of equivalent level programmes, it explicitly seeks advice from external peers and, where appropriate, professional and statutory bodies;*
- iv. *its programme approval, monitoring and review arrangements are robust, applied consistently, have at all levels a broadly based external dimension and take appropriate account of the specific requirements of different levels of award and different modes of delivery; and,*
- v. *there is an explicit and close relationship between academic planning and decisions on resource allocation.*

For a PDAPs applicant, the specific requirements might be: Policies, procedures and guidance associated with programme development, approval and review; Policies, procedures and guidance associated with assessment of students and external examining; List of external examiners (if available); Terms of reference, constitution, reporting line and minutes for last two years of any advisory body; any reports from Professional Statutory and Regulatory Bodies.

We think a strong and convincing probationary plan should point to evidence already available of comprehensive preparations for the probationary period. It will demonstrate sufficiency and realism of the provider's plans, commitment of resources and risk management for the probationary period. The plan should demonstrate the provider's initial capacity to understand the DAPs criteria and to articulate what it considers to be required from a body authorised to award its own higher education qualifications. The plan should also identify the evidence that will become available during the probationary period.

As part of the probationary DAPs tests we expect there to be:

- analysis of the provider's submission, probationary plan and supporting evidence.
- a visit to the provider's premises, including scrutiny and assessment of learning resources and interviews and meetings with governors, managers, staff and students (if available) and other key stakeholders.

The analysis and meetings would test the applicant's initial understanding of the DAPs criteria, commitment to, and ownership of, the probationary plan, and seek factual information about the proposed probationary DAPs plan.

The visit would include meetings with, for example, governors, managers, staff and students (if available). Ownership and a thorough understanding of academic governance and quality assurance processes/arrangements must be tested, in part to safeguard against applicants simply buying in consultants to write for express purposes of achieving PDAPs. A final meeting between the team and the applicant provides a forum for a developmental discussion of the probationary plan. This should help increase likelihood of successful delivery of provision, protection of standards and management of the powers. The meetings also allow opportunity for the applicant and the team to discuss the scrutiny activity that would be required during the probationary period.

This could also help to inform the focus and pattern of the scrutiny process that will operate concurrently with the probationary period. The scrutiny process is likely to intensify around certain key periods, tailored to the provider's circumstances, – e.g. programme approval, first term of delivery, assessment or focusing more closely on identified weaker areas.

## Outcome

We intend the PDAPs test to leads to one of three possible judgements by the team: 'ready now', 'nearly ready', or 'not ready'. 'Nearly ready' allows for commencement to be agreed subject to, for example, completion of further preparatory actions before powers are granted.

Ready now	Nearly ready	Not ready
<p>Applicant required to implement agreed probationary plan and participate in monitoring and scrutiny process to achieve full DAPs.</p> <p>Specific conditions may also be applied at this stage. For example, amendments to the probationary plan, the start date for the probationary period, limitations to powers, by level, programme or subject areas.</p>	<p>Specific areas identified where further preparatory action is required before the probationary period can begin.</p>	<p>A number of areas for further development have been identified which mean that the applicant is not ready to begin the probationary period.</p>

It is likely that the commencement of the probationary period would be timed to coincide with the beginning of an academic year.

### Monitoring during the probationary period

Once the probationary plan has been signed off and the probationary period has begun, we expect applicants to be subject to a form of monitoring and scrutiny.

Most providers granted PDAPs will not from the outset be able to meet fully the DAPs criteria and overarching requirements<sup>14</sup>. Instead, we intend that they will need to demonstrate evidence of progression towards the fulfilment of the criteria before and during the probationary period, and fully satisfy the criteria by the end of the probationary

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<sup>14</sup> Some providers with a track record may prefer to apply for probationary DAPs as opposed to full DAPs.

period. The nature of the evidence available before and during probation is therefore differentiated for those granted PDAPs, enabling a three year developmental trajectory.

The three year probationary period may initially be more concerned with the articulation of plans, policies and processes. Later on attention is expected to focus on how the provider is learning from the practice of operating as probationary DAPs holder and is adjusting how it implements this responsibility based on its own practical experience. By year 3, the provider should be able to demonstrate that it has reached a sufficient level of maturity to meet the overarching requirement of a cohesive self-critical academic community.

During the probationary period, in addition to the regular monitoring that the OfS will be undertaking on the provider, we expect there to be monitoring and updates from the designated Quality Body to the OfS. This is to monitor the provider's progress against the probationary plan; and to gather evidence that the provider is exercising its powers appropriately and will be in a position to satisfy the DAPs criteria fully by the end of the probationary period.

This would be integrated with other regulatory intelligence so there is a coherent approach to monitoring the overall regulatory risk of the provider and intervening as necessary. The OfS would need to intervene at an early opportunity if there were concerns that the provider would not be in a position to be granted full DAPs at the end of the three year period.

During the three year probationary period, there should be a distinction between monitoring for probationary DAPs purposes, and scrutiny to progress to full DAPs.

We expect monitoring to centre on the probationary plan, which is a live document maintained by the applicant. We intend to applicants to be required to provide a quarterly progress update on the probationary plan, alerting the quality body to any issues that may impede progress. An officer of the designated quality body, in conjunction with a small team of peers, should verify the applicant's view of progress.

### **Scrutiny during the probationary period**

We expect scrutiny to contain elements of peer review and for it to include observation visits to gather evidence first hand of the provider's implementation of its PDAP responsibilities. Observation visits can also be targeted to allow verification of progress against the probationary plan.

Under our plans, progress reports are provided at regular intervals. A final report is provided ahead of the end of the probation period. A decision by the OfS on whether to:

grant full DAPs (with or without restrictions), extend probation<sup>15</sup>, or revoke powers is then made.

Given the amount of preparation and resource that a provider will need to put in place in order to meet the initial PDAPs entry tests, we envisage that the vast majority of PDAP holders will be in a position to graduate to full DAPs at the end of the probationary period. In the event that this were not the case, a decision might be taken to extend the probationary period for a specific period of time, or the PDAPs could lapse and not be renewed on the basis that the applicant is unlikely to be in a position to satisfy the requirements for full DAPs in the foreseeable future. Should this be the case, the provider's student protection plan would come into force, and enable any students to finish their studies and obtain their degree via alternative routes. We would not expect providers that have failed PDAPs to be eligible to reapply in the near future.

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<sup>15</sup> This is expected to only happen in exceptional circumstances.

## **Powers and restrictions**

We expect providers awarded PDAPs to be subject to certain restrictions during the probationary period. In particular we expect these to include:

- Entitlement to make awards to students only in the programme areas included in their probationary plan.
- No entitlement to validate or franchise provision to other providers.

We do not expect providers with PDAPs to be eligible for University Title.

We expect their probationary DAPs to be time limited to three years and for restrictions to remain in place until they have successfully completed the probationary period. In all cases we would expect their student protection plans to address the eventuality of the provider not proceeding to full DAPs, and protect students accordingly. For example, the OfS' powers to enter into commissioning arrangements may be used for teach-out purposes, if the market does not offer sufficient teach-out provision to meet the student protection requirements.

## Case Studies: Probationary DAPs

### 1) A new intelligent offer

A world-leading company specialising in artificial intelligence (AI) research that already employs a group of experienced academics is looking to set up a new provider that specialises in AI, and would like to enter the market. It already has cutting edge facilities and is willing to invest its own resources, and has set up the appropriate structures around management, governance and quality assurance in preparation for meeting the registration conditions for the Approved (Fee Cap) category.

As the experienced academics are leading experts in the field and have all previously worked at prestigious institutions, and many have first-hand experience of setting and maintaining standards, it decides to opt for probationary DAPs.

### 2) Overseas Excellence

A world-renowned US provider is looking to set-up a new institution in England, drawing on its overseas expertise, but awarding English Degrees. Having found appropriate facilities and having set-up an English entity to control provision in England, the provider dispatches an experienced team of academics that work on the set-up of governance structures, course design and robust processes for the maintenance of academic standards.

### 3) An experienced spin-off

A group of leading academics from a top-ten University seek to break away from their existing institution – taking inspiration from the scholars that set up the University of Cambridge. As they are leading academics, they all have plenty of experience in course design, teaching, and the maintenance of standards.

#### **Application:**

When they apply to become registered, all three providers indicate they wish to access probationary DAPs. When completing their entry test, they are therefore subject to some additional tests, and need to submit their carefully developed probationary DAPs plan.

They meet all entry level checks, including the stringent quality criteria. In addition, the OfS is content that their probationary DAPs plans are strong, showing a clear appreciation of the steps they need to take to pass the full DAPs scrutiny within the next three years.

The OfS approves probationary DAPs, and the new providers can open their doors to new students, awarding their own degrees from year 1.

## Annex 2 - Bachelor DAPs and subject specific DAPs

### Bachelor DAPs

The rationale behind Bachelor level DAPs is that it will provide an opportunity for providers not ready (or not wanting) to offer higher levels of qualifications to enter the market. Also, by allowing for providers to apply for Bachelor only DAPs, this should mitigate the risk and allows the provider time to mature and decide whether it wants to apply for wider DAPs.

Enabling universities that teach up to Bachelor level will give students a wider choice of university options with different mixtures of teaching and research.

### Criteria

We plan for the criteria to be broadly similar to full TDAPs, as is the case now with Foundation DAPs, since most of the responsibilities apply equally, regardless of the level at which the provider is designing, delivering and making awards. It is likely that the main differences will be in the management and staffing requirements of programmes and awards at level 6 and level 7. This is due to the distinctions between the nature and scope of understanding expected of students studying for each level of award and, how in turn, degree awarding bodies ensure that this is informed, as appropriate, by knowledge at the forefront of a discipline– i.e. by breaking down TDAPs criteria so that there is greater clarity for applicants.

#### **Bachelor DAPs - How criteria compare to full DAPs criteria:**

Criterion B2 in the current DAPs criteria requires that an organisation granted taught Degree Awarding Powers has clear and consistently applied mechanisms for defining and securing the academic standards of its higher education provision.

Current evidence requirement: (i) The applicant will be required to provide evidence that: its higher education awards are offered at levels that correspond to the relevant levels of the Qualifications Frameworks.

For Bachelors only the specific requirements could be:

- Policies and procedures and guidance associated with Bachelors level programme development, approval, monitoring, review and modification.
- Mapping document showing how the provider meets, through its Bachelors programmes, section A of the UK Quality Code for Higher Education, and associated guidance.
- All programme specifications for Bachelors programmes.

## Subject specific DAPs

The intention is that specialised providers who do not want to offer a wider range of subjects can undergo a targeted, proportionate scrutiny process. This should provide a more viable opportunity for more specialised providers who otherwise may not want to undergo a full DAPs scrutiny. Exercising subject specific DAPs is a way to mitigate the risks associated with these significant responsibilities and allows the provider time to mature and decide whether it wants to apply for wider DAPs. As this development took place, the provider has the option to apply for single subject DAPs will be available to applicants for all the different forms of DAPs – i.e. Foundation, Bachelors, Taught, and Research, although the latter is expected to be rare.

### Criteria

Although we intend the criteria to be broadly similar to full TDAPs, we want to narrow the scrutiny so that matters such as academic and professional expertise can focus on the subjects in question rather than more generally.

Should a provider granted subject specific DAPs wish to apply for powers to award in a further subject(s), this would be possible subject to satisfying further quality checks.

#### **Subject Specific DAPs - How criteria compare to full DAPs criteria**

##### Scholarship and the pedagogical effectiveness of academic staff

Current Criterion C1: The staff of an organisation granted powers to award taught degrees will be competent to teach, facilitate learning and undertake assessment to the level of the qualifications being awarded.

Current evidence requirement: (i) The applicant will be required to provide evidence that all teaching staff engaged with the delivery of its higher education programmes have relevant: academic and/or professional expertise

For single subjects the specific requirements could be:

- Staff recruitment and selection policies.
- Curricula vitae (to a standard format) of the teaching staff for the single subject.

The department intends to consult on the detail of the criteria for these new types of DAPs prior to publishing them in new guidance.

We expect holders of full and indefinite Bachelor only or subject specific DAPs to be eligible for University Title if they can meet the criteria.

## **Annex 3 - Revocation and Variation**

### **Variation of Degree Awarding Powers**

We are giving the OfS the power to vary the scope of Degree Awarding Powers. This will enable the OfS to apply DAPs flexibly and appropriately to respond to provider and student needs.

#### **Expansion of Powers**

This power might be used positively, for instance to make time-limited Degree Awarding Powers indefinite. Under our plans, all new full Degree Awarding Powers will be time-limited to three years in the first instance. On successfully passing a review at the end of the three year period, these powers are intended to become indefinite. The OfS' power to vary DAPs can achieve this in a straightforward manner.

Another example would be that where a new provider was only successful in gaining DAPs for a limited range of subjects, but they can subsequently demonstrate their progression and that they can now meet the criteria for comprehensive subject DAPs, this power could be used to vary the DAPs accordingly – following appropriate scrutiny.

In any cases of expansion of powers, the provider would need to demonstrate they can meet the relevant criteria. Depending on the nature of the expansion, this may take the form of additional scrutiny, or – as for instance in the case of making time-limited powers indefinite – a more light touch review of how the provider has operated with DAPs to date.

#### **Restriction of Powers**

There may be circumstances where the OfS considers it appropriate, i.e. for the benefits of students to limit the scope of a provider's Degree Awarding Powers, for instance to Bachelor only DAPs.

We expect any such restrictions to be triggered by concerns raised through various routes, including any of the OfS' regular monitoring functions. Concerns would prompt a more intensive scrutiny including more detailed quality review visits by peer reviewers with expertise and experience in setting, maintaining and assuring academic standards and quality.

If concerns were upheld, the OfS could then deploy its various intervention methods – one of which is variation of DAPs.

We expect this power to be used in less extreme circumstances than revocation of Degree Awarding Powers, where a restriction of powers may help a provider focus on particular areas of an improvement plan, or where there were particular concerns in relation to, for example, a particular type or level of degree.

## **Revocation of Degree Awarding Powers and University Title**

The circumstances of revocation of DAPs and/or UT will be set in the context of the risk based regulatory framework and monitoring regime as a whole. This will enable higher risk providers to be monitored more closely and will enable closer monitoring in relevant circumstances and at appropriate trigger points.

### **Registration**

In order to protect quality and safeguard students, we expect providers with existing University Title or Degree Awarding Powers to be registered as either an Approved or Approved (fee cap) provider. The bill explicitly provides for a power to revoke DAPs and UT, including in circumstances where an institution does not become a registered higher education provider.<sup>16</sup> The register will be voluntary. However we expect that only providers registered at either an Approved or Approved (fee cap) level will be able to access certain benefits, such as student loan funding and eligibility for new DAPs.

Having institutions with DAPs and UT operate outside of the regulated system could be a risk for students as well as the reputation of English degrees and universities. By introducing the register we are ensuring that the system is easy to understand for students, and it is evident which institutions are approved, regulated and quality assured.

We expect that the OfS will work with providers constructively, and apply the regulatory framework in a way that corresponds to the level of risk posed by a provider, whilst minimising burdens where possible.

For example, if a provider did not want to access student support and grant funding, it may be appropriate for the level of regulatory oversight to be less than for providers that do want to access these funding streams. Nevertheless we would still expect such providers to register, in order to demonstrate to students that they are part of the regulated HE sector.

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<sup>16</sup> See clauses 42, 43 and 53 of the Bill.

## Regulatory Intervention

Express powers for the OfS as the regulator are vital to ensure quality is maintained and students are protected. We expect the powers to revoke DAPs and/or UT to be used only rarely, and in circumstances where other interventions – such as variation of DAPs, an improvement plan, etc. – have failed to produce the necessary results.

For example, where a provider's quality had dropped to unacceptable levels, and several attempts to improve it have not shown adequate results, the OfS may decide that it is in the best interest of students to remove the provider's ability to award its own degrees.

We expect that such a removal would cause the provider's student protection plans to come into force, and enable existing students to be taught out, continue their studies elsewhere, or have their degrees awarded by another provider.<sup>17</sup>

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<sup>17</sup> See the published information note on Student Protection Plans for further information.  
<https://www.gov.uk/government/publications/higher-education-and-research-bill-student-protection-plans>

### **Case study – revocation of DAPs and UT**

The annual quality review identifies a possible issue at University A. As a result the designated quality body is asked to carry out a detailed assessment, and finds that the taught Masters courses on offer need improvement, as they are at risk of no longer meeting what is currently Level 7 of the Framework for Higher Education Qualifications (our intention is that such a framework – or equivalent – continues to exist under the new system, although this may be subject to change from time to time). The designated quality body and the OfS work together to set additional ongoing conditions of registration, which include an action plan for improvement and more frequent quality reviews.

However instead of making improvements, the quality reviews show that the provider's quality and standards continue to drop. As a result the OfS imposes student number controls, to limit the University's intake and varies their Degree Awarding Powers so that they are no longer able to award taught Masters degrees. Existing students on those courses are taught out under close supervision and can obtain their degrees.

The designated quality body and the OfS continue to work with the provider to improve quality, through further action plans and improvement notices . However after another quality review it becomes clear that there are no improvements. As a result the OfS decides to revoke the University's Degree Awarding Powers and University Title.

Students are protected through the student protection plan and are all able to finish their courses and obtain their degrees from a nearby provider.

Since we want only providers with full and indefinite Degree Awarding Powers to have access to University Title, a revocation of UT would in most cases be a direct result of the loss of DAPs. One of the key defining characteristics of a University is that it awards degrees. If this ability is lost, it is therefore only right that the institution can no longer call itself a University.

## **Removal of DAPs and UT in cases of changes of circumstances such as sales, ownership, mergers, etc.**

We intend to retain current practice of reviewing eligibility for DAPs and UT in cases of significant structural changes, such as a mergers and change of ownership. We also intend to retain the principle that DAPs cannot be transferred, and rest with the cohesive academic community that obtained the powers in the first instance.

As now, we envisage that there will be some situations or changes that would trigger a review of entitlement for DAPs and UT against established criteria.

We expect to set out the detailed criteria and processes in government guidance – including which situations would trigger such a review. We expect this to include changes in circumstances such as changes in control or ownership, sales, mergers and other significant structural changes of this kind.

As now, we envisage that where such a situation occurs, and the need for a review arises, a full assessment is carried out, which may result in a revocation of DAPs and/or UT if the provider is unable to meet the criteria.

For example, a structural change, such as a sale or merger, may mean that a provider is no longer the same cohesive academic community that was awarded DAPs. As a result, the OfS may revoke DAPs and UT for this provider.

Likewise, it is possible to envisage a scenario where DAPs may be retained, but following the change the provider falls short of some criteria, i.e. the anticipated criterion that more than 55% of full time equivalent students must be studying Higher Education. In which case, the OfS may revoke University Title only.

## **Processes and safeguards (DAPs and UT)**

We plan for the detailed process and criteria for varying or removing DAPs and UT to be set out in departmental guidance, which the OfS will need to have regard to. We intend to consult on the details of this new guidance prior to publication, to provide further opportunity for stakeholder input. This is designed to ensure that any decision to remove DAPs or UT is made fairly and transparently.

The OfS, as an independent regulator, is best placed to make an assessment as to whether DAPs should be varied or revoked, or UT revoked, and we would expect the OfS to seek information from the Designated Quality Body, and other relevant parties as required.

The Bill already ensures there are appropriate checks and safeguards on the OfS' powers. For example, the OfS will have to publish its regulatory framework and ensure the regulatory burden on each provider is proportionate to its level of risk. The OfS board is expected to have representation from the sector. The OfS must act in accordance with its duties to have regard to the need to promote quality, encourage competition and promote value for money.

OfS orders granting, varying or revoking DAPs, and revoking UT will be Statutory Instruments— there is a system in place enabling statutory instruments to be numbered, published and printed. This enhances the transparency of the system, as Privy Council orders for DAPs are currently neither statutory instruments, nor are they published.

### **Procedural safeguards and right to appeal:<sup>18</sup>**

The Bill already provides for strong, statutory safeguards to ensure there are appropriate checks on the OfS' powers to vary or revoke DAPs, and revoke UT.<sup>19</sup>

The processes the OfS will need to follow if it wants to make use of these powers are explicitly set out in the Bill. For example, the OfS will be obliged to provide reasons for proposing to take these steps, and give any affected providers adequate notice and sufficient time to make effective representations as to their case.

If the OfS consequently decides to vary or revoke Degree Awarding Powers or revoke University Title, the provider will have an opportunity to appeal against this decision at the First Tier Tribunal.

Any variation or revocation cannot come into effect whilst an appeal is still pending. This means that the OfS cannot impose a variation or revocation before routes of appeal have been exhausted unless the provider tells the OfS it does not intend to appeal.

### **Revocation of DAPs/UT for chartered bodies**

**The Bill does not take away the Royal Charters establishing any of our Higher Education institutions.**

Universities, including those incorporated via Royal Charter are autonomous institutions, and the Bill will not change this. A Royal Charter can be a form of incorporation, and charters establishing institutions normally contain a wide range of provisions, such as

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<sup>18</sup> The safeguards described here apply to revocation and variation only. We plan to retain current practice whereby the routes for review against decisions to award or not award DAPs and UT will be internal. We envisage a similar process to current routes of review to the QAA board.

<sup>19</sup> In particular clauses 44, 54, 45 and 55.

governing arrangements and powers of the institution. They will also state the name of the institution, and may include provisions on the institution's Degree Awarding Powers.

The OfS' powers to revoke DAPs or UT will apply to all institutions, no matter how they were obtained.

In the event that a chartered institution were to lose their DAPs or UT, the Secretary of State can amend or revoke the relevant provisions in the Charter, where appropriate, so that the Charters operate smoothly and reflect any changes made by the OfS' to DAPs or UT contained in that Royal Charter.

Any such amendments would be **subject to parliamentary scrutiny via the affirmative procedure, and we do not envisage a scenario where this would result in the revocation of an entire Royal Charter which established the institution.**

## **Annex 4 - Regulating access to DAPs - Current system**

Section 76 of the Further and Higher Education Act 1992 empowers the Privy Council to specify institutions of higher education as competent to award degrees.

In considering applications for such powers, the Privy Council takes advice from DfE following a recommendation from QAA.

DfE maintain the criteria against which applications are considered. These are published criteria but are not statutory. The current criteria were approved by BIS in 2004 and updated guidance issued in 2015 to reflect HEFCE's taking on responsibility for the administration of the DAPs process from the department.

In advising on applications, QAA is guided by the relevant criteria and associated evidence requirements.

### **General principles**

The specific criteria cover governance and academic management; academic standards and quality assurance; scholarship and pedagogical effectiveness of staff; and the environment supporting the delivery of taught HE programmes.

Applicants should normally be able to demonstrate that they:

- Have had no fewer than four years consecutive experience, immediately preceding application, of delivering HE programmes at a level at least equivalent of level 6 of the HE framework ( the "track record" requirement)
- Normally have the majority of their HE students on programmes at level 6 or above

The criteria are designed to establish that the applicant has a well-founded, cohesive and self-critical academic community demonstrating firm guardianship of its standards.

TDAPs are granted indefinitely to publicly-funded HE institutions but granted on a 6 yearly renewable basis to alternative providers.

### **Three types of DAPs**

Powers may be granted in relation to three categories of degrees, commonly referred to as "foundation," "taught" and "research" degrees. Holders of RDAPs can award all types; TDAPs taught and foundation degrees. FDAPs are available to institutions within the further education sector only.

TDAPs empower a holder to award degrees up to taught master's level. Only an RDAPs holder can award doctoral degrees.

A holder of DAPs can award degrees in any discipline.

### **Meeting the track record requirement**

The established route followed when applying for DAPs is via the delivery of UK degree or equivalent programmes on behalf of a body recognised as being able to award its own UK degrees.

### **Role of QAA in considering applications**

Scrutiny for DAPs is an independent peer review process. Following receipt of an application the Advisory Committee on Degree Awarding Powers (ACDAP) takes a view on whether it should proceed to scrutiny. Following scrutiny, ACDAP makes a recommendation to the QAA Board who then make a recommendation to DfE via HEFCE on whether the application should be approved. DfE in turn makes a recommendation to the Privy Council in the light of the QAA Board's advice.

### **QAA considerations in advising on applications**

QAA scrutiny of Degree Awarding Powers applications is based on evidence-based criteria<sup>20</sup> which call upon an applicant to provide a clear indication of the means by which it:

- manages its academic affairs;
- sets and maintains the standards of awards;
- designs programmes and provides learning support to enable students to achieve academic objectives and intended learning outcomes;
- responds to identified strengths and weaknesses;
- ensures that its staff are competent to teach and assess UK degree provision;
- ensures that it has in place an effective teaching and learning infrastructure (including student and administrative support arrangements) which is monitored.

In considering whether the applicant meets the criteria, QAA judges, through its examination of the evidence provided and against the criteria, the extent to which an organisation can engender public confidence in its capacity to maintain the standards of the degrees it offers.

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<sup>20</sup> There are 4 main criteria each supported by up to 12 evidence requirements



Department  
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