



# Department for Business Innovation & Skills

## SPECIFIC COURSE DESIGNATION FOR ALTERNATIVE HIGHER EDUCATION PROVIDERS

Guidance for Providers: Criteria and  
Conditions and Annual Re-designation

JULY 2015

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# Government Policy

Since the 2012/13 academic year a new system has been progressively introduced to oversee the specific designation of higher education courses at alternative providers. Government remains firmly committed to continuing to strengthen that system to ensure that the interests of students and taxpayers are protected, whilst continuing to give students a wider choice about how and where they want to study.

It remains a clear priority for the Government to widen the range of high quality higher education providers. This will stimulate competition, further increase choice for students, and deliver better value for money for both taxpayers and students across the higher education sector.

Equally important to promoting and growing good provision is ensuring a regulatory regime which guards against poor quality. Government has already taken a number of steps to secure improved standards among alternative providers of higher education. And the Government recently published its response to the “Alternative Providers of Higher Education: Improving Quality and Value for Money” consultation. The response can be found here:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/447340/BIS-15-435-alternative-providers-consultation\\_response.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/447340/BIS-15-435-alternative-providers-consultation_response.pdf)

The additional measures set out in this consultation are incorporated into this latest set out guidance and will ensure that:

- Higher education courses should be available for all those who are qualified by ability and attainment to pursue them. We will put safeguards in place, for example through a minimum level of English language capability, so that only students with the ability to succeed are recruited.
- We will improve the information available to students - so that they can make well informed choices about what and where to study.
- We will link alternative providers' performance to their student number control, with a “basic” allocation for providers meeting the required minimum standards and a “performance pool”, which the best performing providers will be eligible to bid for.
- These measures will apply from the 2016/17 academic year. Looking ahead, we will align the performance pool criteria with the Teaching Excellence Framework.

Looking beyond 2016/17, we will take forward work to explore how best to remove barriers that may be preventing alternative providers from entering the market for the first time, whilst establishing how best we might adopt a risk-based approach that safeguards quality.

Government's plan to improve productivity, "**Fixing the foundations: creating a more productive nation**" committed Government to:

*"introduce a clearer and faster route to degree awarding powers for those assessed to offer the best quality education. As part of the review of validation arrangements, the government will explore options to allow the best providers to offer degrees independently of existing institutions before they obtain degree awarding powers."*

and

*"free up student number controls for the best alternative providers by introducing a performance pool of places from 2016-17, which will allocate additional student places to the best providers."*

The direction of travel is clear - Government will continue to very closely monitor the quality of courses offered by alternative providers and will impose sanctions on those where quality is not high enough. Those providers that offer the highest quality and value for money will be enabled to grow. And we will create the conditions for new high quality providers to enter the market for the first time and enable them to compete on a level playing field.

# What is this guidance and who is it for?

This guidance sets out information on:

- the Specific Course Designation system,
- Annual Re-designation/Monitoring,
- the criteria for granting designation,
- the assessment and decision making process,
- the conditions of Specific Course Designation,
- the process for reporting changes of circumstances, and,
- how student number controls and sanctions will be applied.

This consolidated guidance updates and replaces previous documents published by the Department for Business, Innovation and Skills<sup>1</sup>. It comes into effect on the date of publication.

It should be read in conjunction with the information about application, annual monitoring process and student number controls published on the Higher Education Funding Council for England (HEFCE) website at <http://www.hefce.ac.uk/reg/desig/>

It should also be read alongside the Quality Assurance Agency's (QAA) guidance on Higher Education Review (AP) and associated annual monitoring information which can be found at <http://www.qaa.ac.uk/en/ReviewsAndReports/Pages/RSCD.aspx>

This guidance applies only to Higher Education providers in the UK for the purposes of specific course and annual re-designation in order to enable eligible English-domiciled students' access to student support funded by the Department for Business, Innovation and Skills (the Department) via the Student Loans Company (SLC). It is intended for those providers who wish to apply for courses to be specifically designated for student support purposes and for those providers with existing designation. HEFCE-funded providers operating franchise and validation arrangements with alternative providers will also find it of interest.

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<sup>1</sup> 'Specific Course Designation; Guidance for Providers: Criteria and Conditions - August 2014; 'Alternative Provider Specific Course Designation: Supplementary Guidance for Providers - March 2015'.

Specific Course Designation for the purposes of student support provided by the authorities in Scotland, Northern Ireland and Wales is a matter for those authorities and they have their own procedures and guidance.

Providers should apply separately to:-

The Student Awards Agency for Scotland: [saastrup@scotland.gsi.gov.uk](mailto:saastrup@scotland.gsi.gov.uk)

Department for Employment and Learning, Northern Ireland: [studentfinance@delni.gov.uk](mailto:studentfinance@delni.gov.uk)

Higher Education Division, Wales: [studentfinancedivision@wales.gsi.gov.uk](mailto:studentfinancedivision@wales.gsi.gov.uk)

The designation process described in this guidance **does not apply** to Initial Teacher Training (ITT) courses delivered by ITT providers with accreditation from the National College for Teaching and Leadership. In these cases the National College for Teaching and Leadership (NCTL) will provide the Department with the necessary assurance over provider quality, sustainability and governance through an annual Accounting Officer letter. However, if an accredited ITT provider intends to deliver any courses which are not designated by NCTL then they will be required to go through the specific course designation process described in this guidance in their own right.

This guidance is subject to regular review and may be updated at any time. Providers are advised to check the HEFCE website for a link to the latest version of the guidance and any further information about the process before submitting an application.

A list of definitions is provided at Annex A.

## Confidentiality and Data Protection

In general the information supplied by providers as part of the specific course designation application process will be treated in confidence and only shared with parties involved in the assessment of the application. This may include validation awarding bodies and the Quality Assurance Agency for Higher Education (QAA), the Higher Education Statistics Agency (HESA) and HEFCE.

It may also be used to prevent and detect crimes of any nature, including fraud and those relating to national security. We reserve the right to, or we may have to, give outside organisations, including the police, and other crime prevention and detection agencies, the Home Office, UK Visas and Immigration, the Student Loans Company (SLC), HMRC, the Student Awards Agency for Scotland, the Welsh Government, Department for Employment and Learning, Northern Ireland, examination boards or awarding bodies, information from applications and associated records. We also reserve the right to authenticate identities by using official, public and/or commercial identity checking services and we may request to see passports if this is judged to be necessary to verify the identities of key individuals at the provider.

The Department will comply with its obligations in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the

Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004) and with the statutory Code of Practice under FOIA

Providers should note that if specific course designation is granted provider and course details will be published on the HEFCE Register of HE Providers.

## Complaints

If you are unhappy about any aspect of the Department's service you can use the Department's complaints procedure. More information about this is on the Department for Business, Innovation and Skills website at:

<https://www.gov.uk/government/organisations/department-for-business-innovation-skills/about/complaints-procedure>

## Abuse of Specific Course Designation

The Department treats any allegation of abuse of Specific Course Designation in the strictest confidence. Anyone with information about abuse of specific course designation can contact the Department by emailing: [designation.enquiries@bis.gsi.gov.uk](mailto:designation.enquiries@bis.gsi.gov.uk)

# Chapter 1: The Designation System

## Introduction

The Government's response to the Higher Education White Paper in 2012 and associated Technical Consultation announced that the system of specific designation of higher education courses at alternative providers would be strengthened in the interests of giving students a real choice.<sup>2</sup> The new system, Specific Course Designation, was introduced in June 2013.

In order to access Higher Education student support a higher education course must be a designated course. Eligible higher education courses that are wholly provided by authority funded institutions<sup>3</sup> are automatically designated under the student support regulations<sup>4</sup>.

In addition, the Secretary of State has the discretion to designate courses which are not automatically designated. These are generally validated courses which are developed and delivered by alternative providers (these include private businesses, profit making institutions and private schools) but also include courses delivered by alternative providers under a franchise or other collaborative arrangements with authority funded institutions. Course designation is specific to the location at which the course is being delivered and in order for students to access student support for a course run by the provider at more than one location, each course at each of those locations must be specifically designated.

Courses delivered by an alternative provider in partnership/collaboration with another provider (whether in whole, or part), must be specifically designated in order to attract student support even where the partner institution is authority funded.

Specific designation of a course allows eligible English-domiciled students on that course to access loans and grants from the Student Loans Company. It is therefore essential that Government ensures that there are robust processes in place to protect the interest of students, the reputation of UK higher education and the public investment.

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<sup>2</sup> Available at <http://www.bis.gov.uk/assets/biscore/higher-education/docs/q12-890-government-response-students-and-regulatory-framework-higher-education>

<sup>3</sup> "authority-funded" means—

(a)in relation to educational institutions in England, maintained or assisted by recurrent grants from the Higher Education Funding Council for England;

(b)in relation to educational institutions in Wales, maintained or assisted by recurrent grants from the Higher Education Funding Council for Wales;

(c)in relation to educational institutions in Scotland, maintained or assisted by recurrent grants from the Scottish Funding Council; and

(d)in relation to educational institutions in Northern Ireland, maintained or assisted by recurrent grants from the Department for Employment and Learning in Northern Ireland or the Department for Agriculture and Rural Development in Northern Ireland.";

<sup>4</sup> Education (Student Support) Regulations 2011 (as amended)

Since January 2015, all alternative providers with Specific Course Designation, other than those that hold UK degree awarding powers, are subject to Annual Re-designation. Designations will be granted for the following academic year only. These designations replace those that were previously open ended. Those alternative providers with UK Degree Awarding Powers will not be subject to Annual Re-designation – but we will continue to monitor their performance against the criteria of designation once a year. The Department reserves the right to change this approach in light of any negative outcomes.

HEFCE will undertake the administration of the Annual Re-designation exercise, and an exercise to monitor providers with UK degree awarding powers (Annual Monitoring), and will report the findings to the Department for consideration. The Secretary of State makes all decisions regarding these exercises. Chapter 5 sets out more detail on Annual Re-designation.

## Aims and Principles of the Specific Course Designation System

The overall aims and principles of Government policy for alternative providers is to promote a greater diversity of provision and choice for students, widen access, and ensure value for money for the taxpayer. Under the Specific Course Designation system we aim to ensure:

- students have assurance that the Department has, through the Specific Course Designation process, satisfied itself that there is a reasonable expectation that they will not be at risk of being unable to complete their course as a result of institutional failure;
- students have assurance that the provider is subject to independent, consistent, external, quality assessment;
- the reputation of the UK higher education sector as a whole is protected;
- taxpayers have assurance that the Department is protecting the public interest; and
- the Department has assurance that providers with courses specifically designated for student support will operate in ways consistent with the budget for student finance in England.

The principles of regulation applied to alternative providers subject to the specific course designation process are designed to be consistent, as far as possible, with those applied to the HEFCE-funded sector in relation to the financial health of institutions and the academic standards and quality of their higher education provision.

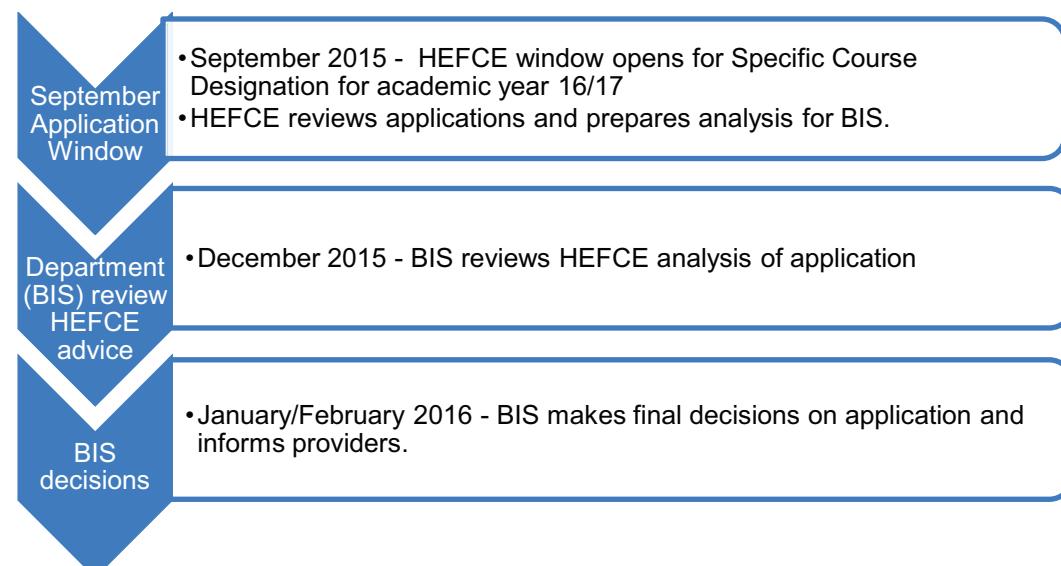
## Aims of the Annual Re-designation System

The aims of the Annual Re-designation system are similar to that of Specific Course Designation namely to ensure that already designated institutions continue to meet conditions of designation and that:

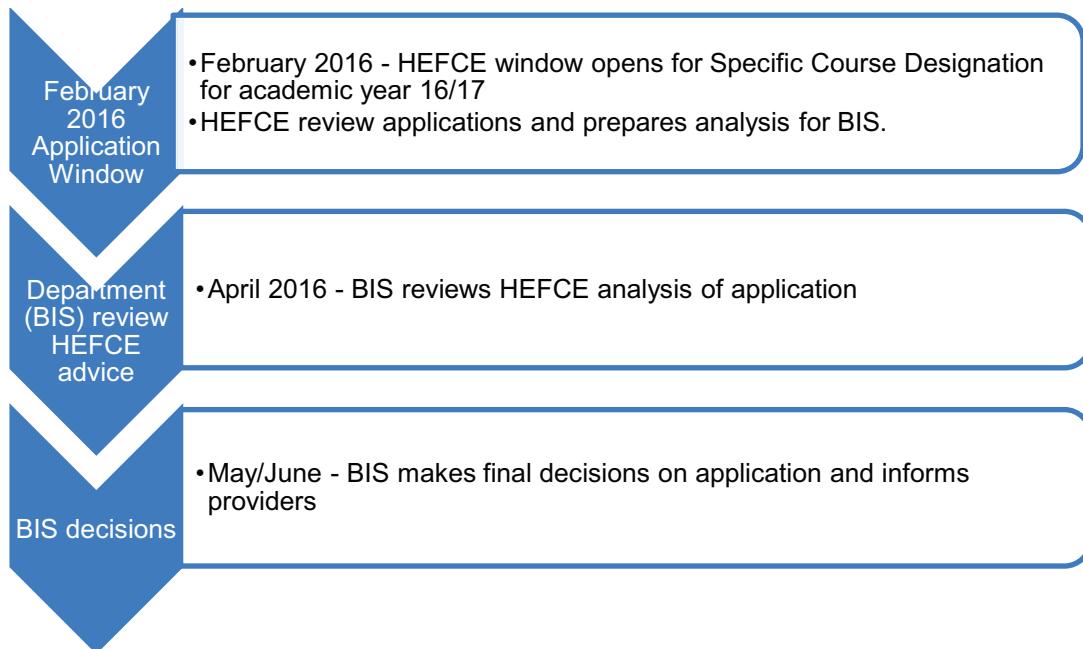
- students have assurance that the Department has satisfied itself that there is a reasonable expectation that they will not be at risk of being unable to complete their course as a result of institutional failure;
- students have assurance that the provider is subject to independent, consistent, external, quality assurance;
- the reputation of the UK higher education sector as a whole is protected;
- taxpayers have assurance that the Department is protecting the public interest including delivering value for money;
- taxpayers have assurance that the provider continues to maintain the conditions of designation through an annual appraisal which will determine their ongoing designation status.

## Process timelines

### September 2015 Specific Course Designation Application Window



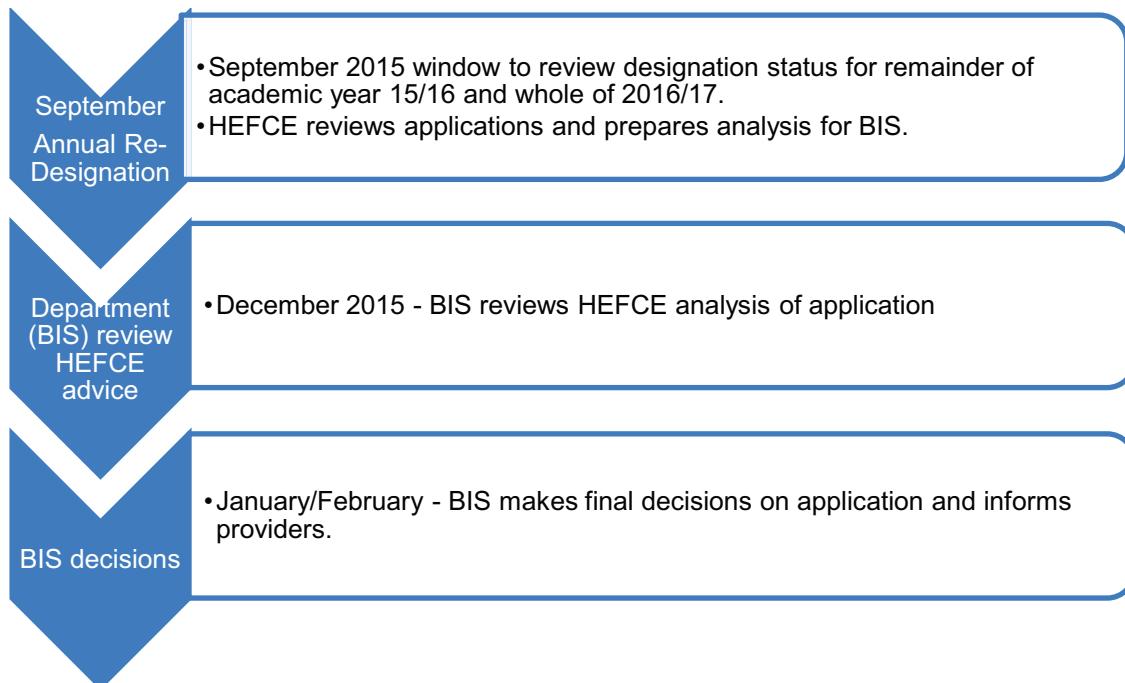
## February 2016 Specific Course Designation Application Window



There are two Specific Course Designation application windows each year, normally in September and February. Each application window will be open for four weeks. These windows are intended for applications for courses starting in the following academic year e.g. applications in September 2015 are for courses starting in academic year 2016/17. **If providers wish to apply for courses with start dates in the current academic year then these will be considered on a case by case basis.** The assessment process will take up to four months to complete (subject to the provider submitting the necessary information).

**To be aware:** providers seeking designation for the first time will need to have a successful Higher Education Review (Alternative Providers) from the QAA. There are two windows to apply for a Higher Education Review (Alternative Providers) which are in November and April each year. In terms of typical timelines, if a provider were to have applied in QAA's April 2015 application window they would be reviewed over autumn 2015 and should have a published report in time for our February course designation window. Those applying for Higher Education Review (Alternative Providers) in the QAA's November 2015 window will receive an outcome in spring/summer 2016 in time for our September 2016 specific course designation application window.

## September 2015 Annual Re-designation Application Window



## Types of Alternative Provider and relevant processes

Alternative providers with specific course designation fall under four broad categories:

- Those delivering courses eligible for student support
- Those with degree awarding powers
- Those with University Title
- 'Small Providers' (with less than 50 students claiming student support across all years)
- Providers with Post Graduate only courses designated for student support

Processes and how/whether they typically apply to different types of alternative providers (AP)

Process	APs with courses designated for student support and a SNC	APs UK degree awarding powers	APs with University or University College Title	'Small Providers'	APs with Post Graduate only designation
Annual Re-designation	✓		Not required as will have UK degree awarding powers	✓	
Annual Monitoring		✓	✓		
QAA Annual Quality Monitoring	✓	✓	✓	✓	
Higher Education Review (Alternative Provider)	✓	✓	✓	✓	
Specific Course Designation (when seeking to add new courses)	✓	✓	✓ (If not opting for Institutional Level Specific Course Designation)	✓	✓
Institutional Level Specific Course Designation			✓		
SNC /allowance	✓	The Dept. reserves the right to implement SNCs	The Dept. reserves the right to implement SNCs	✓	
HEAPES	✓	✓	✓		
Submission of data to HESA	✓	✓	✓	✓	
KIS	✓	✓	✓	✓	

**This table is illustrative only.** Providers should read the full guidance to understand the conditions and criteria which apply to them. If not otherwise indicated conditions or criteria included in this guidance apply to all providers.

## Student Support Arrangements for Specifically Designated Courses

Once a course has been specifically designated, eligible English-domiciled students can apply to the Student Loans Company (SLC) for student support. The maximum tuition fee loan available will depend on the type of provider with overall responsibility for providing the course and whether the course is ‘franchised’ or ‘validated’ (see Annex B).

If the course meets the definition of a ‘validated’ course set out in Annex B it is considered as being delivered by the teaching organisation and the course will be designated in the name of the teaching institution. Where the teaching organisation is an alternative provider students will be eligible to apply for tuition fee loans of up to £6000 for full-time courses (£4500 for part-time courses). In these cases the course must be entered on to the SLC’s Higher Education Institutions course database in the name of the alternative provider. All tuition fee loans are paid directly to the alternative provider.

Alternative providers are not subject to a fee charging cap so if alternative providers charge more than £6000 for full-time courses (£4500 for part-time courses) students will need to pay a contribution to their fees.

If the course meets the definition of a Franchised Course set out in Annex B it is delivered ‘on behalf of’ the franchising institution for the purposes of the regulations and the course will be designated in the name of the franchising institution. Where the franchising institution is authority funded, students will be eligible to apply for tuition fee loans of up to £9000 for full-time courses (£6750 for part-time courses). The course must be entered on to the SLC’s Higher Education Institutions course database in the name of the franchising institution. All tuition fee loans will be paid directly to the franchising institution.

There are no circumstances under which tuition fee loans of more than £6000 will be paid by the SLC directly to an alternative provider.

Eligible students on specifically designated courses can access all other forms of support, such as maintenance loans via the SLC, on the same basis as students at publicly-funded providers. All students will repay on the same basis as other students regardless of where they study.

## Student Information

Providers should not advertise the availability of student support for any course or location until designation has been achieved.

Providers should note that neither the Department, HEFCE or the SLC take any responsibility should information about the availability of student support for particular courses be advertised to students in literature or on websites before the specific designation of those courses is confirmed. Information advertised about the availability of student support for particular courses is not monitored. However, the Department may write to the provider asking them to correct the information if it becomes aware of it.

Providers should be aware that including information on websites or in literature that suggests that student support is available prior to Specific Course Designation being granted for new courses may constitute false advertising and the Department reserves the right to refer such cases to the Competition and Markets Authority. The Department may also take any such instances into account when determining the designation status of a provider.

# Chapter 2: Categories of Specific Course Designation Applications

The scope and nature of the specific course designation process and requirements will depend on:

- the type of course(s) for which the provider is seeking specific designation;
- the status of the provider applying for designation; and,
- whether or not the provider already has courses specifically designated under the new Specific Course Designation process.

There are currently five categories which apply to:

- new alternative providers (i.e. providers that have not previously had courses designated under the new arrangements (New Applicants));
- alternative providers that have already had courses successfully specifically designated under the new Specific Course Designation process in place from June 2013 onwards (Repeat Applicants);
- alternative providers only seeking designation of Postgraduate courses for the purpose of Disabled Students' Allowances (Postgraduate Only Applicants);
- 'franchised courses' delivered 'on behalf of' the authority funded institution by an alternative provider (Franchised Applicants); and,
- alternative providers with University Title or University College Title who wish to obtain Institutional Level Specific Course Designation (Institutional Level Specific Course Designation).

**Please Note: There is no guarantee of designation for any category and courses must be designated for each location they are delivered at.**

## New Applicants

A new applicant is a provider that has not had any undergraduate courses specifically designated under the designation system in place from June 2013 onwards either because they have not previously applied or because their previous application was unsuccessful. In these cases providers will be subject to the full application process as set out below.

## Repeat Applicants

A repeat applicant is a provider that has achieved Specific Course Designation under the new system and is seeking designation for additional courses, new locations or variations on existing courses. In these cases providers will be subject to course-eligibility checks and appropriate financial sustainability, management and governance checks if there has been a material change in circumstances.

## Postgraduate Only Applicants

Postgraduate only applicants are providers seeking specific course designation for Postgraduate courses only.<sup>5</sup> Postgraduate courses can be designated for the purposes of Disabled Students' Allowances only, there is therefore no direct financial benefit to the provider and the risk to public funds is lower than with providers of specifically designated undergraduate courses. In recognition of the lower risk these cases will be subject to a lighter touch application process. This will mean less stringent evidence requirements for these providers in the following areas:

- providers seeking Specific Course Designation of postgraduate courses will not need to comply with the full requirements set out here. For example: there is no requirement for a Quality Assurance Agency Higher Education Review;
- while three years of accounts are required there is no requirement for these to be audited (please note: that the requirement is for full financial statements which must include income and expenditure, balance sheet, and notes to the accounts, a cash flow statement is to be included in the accounts if this is available); and,
- there is no need for financial tables and an application form seeking limited information asking for detail on student numbers, fees etc.

## Institutional Level Specific Course Designation

Alternative providers that have been awarded University Title, University College Title or degree awarding powers have already met a set of rigorous entry requirements including independent quality assurance (linked to their degree awarding powers) and an assessment of their corporate governance and financial sustainability (through their application for University Title or University College Title<sup>6</sup>). In recognition of this, once such providers have successfully gone through the initial assessment under the Specific Course Designation process and subject to them having satisfied the most recent Annual Monitoring review they will be able to apply for an Institutional Level Specific Course

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<sup>5</sup> This guidance does not apply to providers offering postgraduate Initial Teacher Training courses leading to Qualified Teacher Status—these are subject to separate arrangements agreed with the National College for Teaching and Leadership

<sup>6</sup> As set out in the BIS Guidance and Criteria for Degree Awarding Powers and University Title - <https://www.gov.uk/government/publications/applying-for-powers-to-award-taught-degrees-research-degrees-and-university-title>

Designation agreement. As there will be no specific application requirements, the provider will need to put a request in writing to the Department, copied to HEFCE, for the Department to review in order to secure Institutional Level Specific Course Designation.

Institutional Level Specific Course Designation is a variation on Specific Course Designation which means that all eligible courses at the specified institution at the campuses it has applied for are specifically designated and they don't have to be approved on a course by course basis. The maximum tuition fee loan will be the same as for any other alternative provider.

Institutional Level Specific Course Designation will be location specific so if an alternative provider with Institutional Level Specific Course Designation opens a new campus or starts delivering at a new location they will have to seek - and gain - approval from the Department to extend the designation to new campuses/locations.

Providers with Institutional Level Specific Course Designation will be required to participate in the Higher Education Alternative Providers Early Statistics Survey (HEAPES) and subscribe to the Higher Education Statistics Agency (HESA).

As with all providers under the Specific Course Designation system these providers will be required to maintain their relationship with the Quality Assurance Agency (undergoing periodic review and annual quality monitoring) and will be subject to HEFCE managed Annual Monitoring which will review their continued ability to meet the criteria in this guidance and they will be subject to student number controls, where applicable.

Providers with institutional level specific course designation will be required to participate in the annual monitoring exercise, in the Higher Education Alternative Providers Early Statistics (HEAPES) survey and subscribe to the Higher Education Statistics Agency (HESA).

## Annual Re-Designation

All alternative providers with Specific Course Designation, other than those that hold UK degree awarding powers, will be subject to Annual Re-designation. Designations will be granted for the following academic year only. These designations replace those that were previously open ended.

If as a result of either exercise concerns are raised about a provider's compliance with the conditions of designation the Department will consider designation enforcement action as described in Chapter 8. The Department reserves the right not to re-designate the courses of those alternative providers without UK degree awarding powers that fail to demonstrate that they continue to meet the conditions of designation. Should concerns be raised about a provider with UK degree awarding powers during the annual monitoring exercise the Department reserves the right to take enforcement action as set out in Chapter 8.

BIS will work with HEFCE to produce detailed guidance on the requirements each year. This is likely to include requirements to provide:

- confirmation from QAA of a satisfactory QAA judgement following the most recent QAA activity e.g. a full or partial quality review, annual quality monitoring visit and/or assessment of the provider's provision;
- annual return to Companies House or the Charity Commission showing the directors / trustees and other key governance information;
- independently audited annual accounts. By this we mean accounts audited by a registered statutory auditor who is in a different company to that which prepares the accounts. This must include income and expenditure, balance sheet, cash flow statement and full notes to the accounts, irrespective of any statutory exemptions to which a provider may be entitled);
- student number and financial forecast information and commentary which provides an indication of future plans and the financial position of the provider;
- evidence of continued approval/validation from the awarding/validating body; and,
- data to support the student number monitoring and annual allocation.

Providers are reminded that students recruited for academic year 2016/17 must be able to meet the English language requirements set out in our consultation response. It is not expected, however, that providers will be in a position to show evidence of meeting this condition in the September 2015 to January 2016 Annual Re-designation exercise. In making its decision, BIS will also take account of any relevant information from SLC, HESA, QAA or other Government agencies.

The Department will give consideration to the academic performance of providers. In future years this will rely on information submitted to HESA. Until this is available, the Department may require information from validating / awarding bodies regarding the academic performance of students on designated courses.

## Alternative Providers with Degree Awarding Powers

Those alternative providers with UK degree awarding powers will not be subject to Annual Re-designation – but we will continue to monitor their performance against the conditions of designation once a year and they will be subject to annual quality monitoring by QAA which, from September 2015, will include an annual quality monitoring visit, where applicable.

HEFCE will undertake the administration of the annual re-designation exercise and an exercise to monitor providers with UK degree awarding powers, and will report to the

Department on the information submitted to enable the Secretary of State to take decisions.

## **Future Direction**

A lighter touch approach may apply in future to the annual re-designation of providers with specifically designated courses taking into account different types of institutions, their size, growth rates, and the specialist nature of some provision, track record of complying with the annual monitoring quality requirements and taking account of previous history of error rates on SLC's systems, failures to achieve SLC service standards and level of student complaints. We intend to keep the administrative burden for providers to a minimum and, where possible, the process will use information that is produced for other purposes, e.g. the statutory returns to Companies House or the Charity Commission.

In addition, if two academic years elapse and no student's access student support for any of a provider's specifically designated courses we would generally consider the designation for those individual courses to have lapsed.

# Chapter 3: Criteria for Designation

## Quality assessment requirement

The specific course designation system has four key criteria which a provider has to satisfy to enable its courses to be approved for student support. These are:

- quality assessment;
- academic performance/track record;
- financial sustainability, management and governance; and,
- course eligibility.

Alternative providers are expected to satisfy the quality assessment requirement before applying for Specific Course Designation, and to continue to satisfy this criteria once Specific Course Designation has been granted. This means having a published report for a recent, successful review prior to application. In order to maintain designated status once approval has been given, providers will need to undergo further periodic reviews (usually every four years), as well as demonstrating satisfactory progress in QAA annual quality monitoring.

From academic year 2015/16 all higher education providers in England who wish, for the first time, to access public funds have been subject to a single quality assurance framework, Higher Education Review. This means that, from September 2015:

- all new applicants for course designation will need to achieve a successful Higher Education Review (Alternative Providers);
- all alternative providers will now be required to undergo annual monitoring visits (see Chapter 5); and,
- all alternative providers due for a re-review by the Quality Assurance Agency will have to undergo a full Higher Education Review (Alternative Providers).

Detailed information on the Higher Education Review quality assurance framework for alternative providers, how to apply and annual quality monitoring processes can be found at <http://www.qaa.ac.uk/en/ReviewsAndReports/Pages/RSCD.aspx>

HEFCE is currently consulting on quality assessment arrangements for HEFCE-funded providers with anticipated changes being introduced in 2017/18 following a pilot year in 2016/17. More information can be found at <http://www.hefce.ac.uk/reg/review/>

## Quality Assessment

Providers need to demonstrate a commitment to maintaining their relationship with the QAA by paying a subscription or annual maintenance fee to the Agency. As outlined above, the QAA review will now be the same for all higher education providers, Higher Education Review. <http://www.qaa.ac.uk/publications/information-and-guidance/publication?PubID=2933>. This will provide external assurance about the academic standards of alternative providers' higher education awards; the quality and enhancement of learning opportunities; and information available to students.

Once providers have achieved Higher Education Reviews (Alternative Providers) it will be re-reviewed every four years. In the meantime, providers will be subject to QAA's annual quality monitoring. Providers will need to meet the required quality standards in order to maintain designation status. From September 2015, QAA annual quality monitoring will take the form of annual monitoring visits (if a provider has demonstrated an exceptional track record this requirement may be varied). If a provider is being investigated under the QAA Concerns scheme, then an application for annual re-designation cannot proceed until the outcome of the investigation is known. Neither can a provider's application to have new courses designated proceed.

Reports of QAA reviews and updates to these reports following annual quality monitoring visits, including formal judgements, will be published on the QAA website, in line with the QAA's practice. The quality assessment requirements do not apply to providers seeking specific designation of postgraduate courses only.

## Costs relating to the Higher Education Review Process

The review fees for the purpose of Specific Course Designation are set out on the QAA website. QAA will charge a non-refundable application fee. Further review will be needed periodically, depending on the type of review, and the provider will need to meet the cost of these and, as required, of annual monitoring visits. QAA reserves the right to visit the provider if circumstances require it, at the provider's cost. Providers should be aware that, if they choose to apply to the QAA for review, any cost incurred will not be refundable should the review outcome be unsatisfactory or their application for specific course designation be unsuccessful.

## Academic performance/track record

As part of its more stringent and risk-based approach to quality assurance of alternative providers, QAA will consider a provider's track record on managing quality and academic standards when determining the duration and focus of a provider's Higher Education Review and/or annual quality monitoring. Providers with a strong track record in managing quality and academic standards may be subject to a shorter Higher Education Review visit and/or lighter touch annual quality monitoring. This can be demonstrated by positive outcomes from previous QAA reviews and/or other external assessments by quality, professional, statutory and regulatory bodies and/or validating/awarding bodies and evidence that the provider has responded to those activities fully and effectively,

The new QAA Higher Education Review (Alternative Providers) and HEFCE annual monitoring processes also place a greater focus on potential indicators of poor performance such as student recruitment, retention, progression and completion.

Providers need to demonstrate that students who will access student support are likely to be able to achieve the qualification that they study for. The Department will therefore consider providers' academic performance and track record. The methodology used to determine this may change over time.

For 2015/16 new providers, the Department will use information submitted to the QAA as part of the evidence base for the Higher Education Review (Alternative Providers). The Department reserves the right to request further information during the application process should this be required. Where providers voluntarily submit data to HESA, the Department will also give consideration to this information.

## **Financial Sustainability, Management and Governance Requirements**

The overall purpose of the Financial Sustainability, Governance and Management (FSMG) checks is to ensure that providers with specifically designated courses are financially viable and sustainable with a low risk of failure on financial grounds over the medium term.

An assessment against these criteria will be made as part of the Annual Re-designation and Specific Course Designation process. This should give students reasonable confidence that they should not be at risk of being unable to complete their course as a result of institutional failure. The assessment of the provider may take into account the financial, management and governance arrangements of any subsidiary, parent company or linked organisation.

The following is an illustrative list of the evidence that providers will need to give:

- demonstration of the identity of the provider as an organisation and key individuals (for example, the principal, directors, shareholders, trustees) to ensure that the provider is owned, managed and run by 'fit and proper persons';
- description of the corporate governance arrangements (including submission of the articles of association) to enable assessment of the adequacy and appropriateness of these;
- sufficient track record of financial performance, evidenced by the last three years' externally audited accounts. The accounts must be audited each year by a registered auditor<sup>7</sup>. This must not be the same firm and / or individual that prepared the

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<sup>7</sup> The register of statutory auditors can be found at: <http://www.auditregister.org.uk/Forms/Default.aspx>. It is the provider's responsibility to ensure that the audit firm and the auditor signing off the audit opinion are listed on the register.

accounts<sup>8</sup>. The basis of accounts and forecasts will be Generally Accepted Accounting Practice in the UK (UK GAAP) (or successor requirements) or International Financial Reporting Standards (IFRS) if appropriate<sup>9</sup>. New entrant providers or new entities without a track record will need to demonstrate strong support from a parent company or guaranteed financial backing from Directors or investors;

- financial sustainability, evidenced by full financial forecasts for the current year and future three years. This will include a commentary on the assumptions being made and how any financial risks are being managed. Providers may submit a business plan to support their case in addition to the information specifically requested. In order to assess the financial position and performance, the application must cover other relevant contextual information; and,
- accountability for the accuracy of the application.

As part of the financial sustainability assessment, we will analyse the provider's financial performance and position. It is important to note that the indicators will not be used for benchmarking against other providers (or publicly funded higher education institutions) and they will not be used in isolation to determine the financial sustainability assessment of the provider; but rather the financial sustainability assessment will be an overall judgment that considers the context of the provider's financial position and performance (such as its strategic or business plan). Providers need to give assurances that they:

- have adequate cash flow to remain solvent (i.e. have sufficient liquidity to pay their debts as they fall due);
- have an adequate balance sheet (i.e. maintain a net total assets position and not incur deficits if these would result in a net total liabilities position); and
- are fit to receive public funds.

Providers should be aware that any change of ownership or control will automatically require a re-assessment of designation. (See Chapter 6)

Where providers are seeking Specific Course Designation of postgraduate courses only, the financial sustainability, management and governance requirements are slightly different in that:

<sup>8</sup> We are aware that the accountancy institutes allow, in certain circumstances, auditors both to prepare and audit the accounts. For the purposes of designation, the auditor must be independent of the preparation of the accounts to ensure that BIS can have full confidence in the audit. In practical terms, this means that the auditor **must be a different firm** from that which prepares the accounts. Where the provider's own finance team provides all book-keeping services and the auditor simply translates the trial balance produced by the provider into the statutory format of the accounts, it is acceptable for the same firm to provide these services.

<sup>9</sup> Even if providers are not required to prepare full financial statements for statutory purposes, they will still need to provide audited financial statements as part of their application – these will include income and expenditure statement, balance sheet, cash flow statement and notes to the accounts. **The accounts must be audited each year by a registered auditor and should not be the same auditor that prepared the accounts.** The register of statutory auditors can be found at: <http://www.auditregister.org.uk/Forms/Default.aspx>.

- while three years of accounts are required there is no requirement for these to be audited. However, accounts must include income and expenditure, balance sheets and notes to the account. A cashflow statement and notes should be provided if available;
- no financial tables are required; and,
- a limited version of the application is expected asking for student numbers, typical fees and information of that kind.

## Course Eligibility Requirements

In order to be specifically designated each course should meet the general course eligibility criteria as set out in the student support regulations. The key requirements for undergraduate courses are that:

- a. The course must be of at least one academic year's duration;
- b. It must be a course of a standard higher than that of advanced level of the General Certificate of Education ('A' Levels), the National Certificate, National Diploma of the Business and Technician Education Council (BTEC) or the Scottish Qualifications Authority (SQA) but not higher than that of a first degree course; and for entry to which a first degree (or equivalent qualification) is not normally required.
- c. Courses should lead to one of the following qualifications:
  - a first degree (including Integrated/Undergraduate Masters),
  - Foundation Degree,
  - Diploma of Higher Education (Dip HE),
  - Certificate of Higher Education (Cert HE),
  - Higher National Diploma (HND), or Higher National Certificate (HNC) (see below),
  - an Initial Teacher Training (ITT) qualification<sup>10</sup>, or
  - an undergraduate qualification awarded by a body with UK degree awarding powers, which is not listed above

**Please Note: The Department is not accepting Specific Course Designation applications for any new HND or HNC courses in the September 2015 application window.**

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<sup>10</sup> For the purposes of student support courses which lead to Qualified Teacher Status (in the schools sector) or the Diploma in Education and Training (in the FE sector) are currently treated as Initial Teacher Training courses.

## Validation

The course must be validated or approved by an appropriate body. The validating or approving body should either be:

- a) A body with UK degree awarding powers and should be on the Department's list of Recognised Bodies (<http://www.bis.gov.uk/policies/higher-education/recognised-uk-degrees>)
- b) For HNC/HND qualifications, either EdExcel or the Scottish Qualifications Authority.
- c) For Initial Teacher Training qualifications in the further education sector a recognised UK awarding body.

Further information on recognised UK bodies can be found at <http://www.accreditedqualifications.org.uk/qualification-awarding-bodies-in-the-uk.html>. A list of recognised awarding organisations can be found on the Register of regulated qualifications (<http://register.ofqual.gov.uk/Organisation/Browse>).

As part of the eligibility checks providers will need to supply a copy of the relevant validation contracts or approval agreements for each course. This should include the signed contract between the provider and validating body and any schedules or letters setting out the specific courses that are covered. The nature and content of the validation contracts will vary depending on the type of arrangement. However as part of the course-eligibility criteria, checks will be made to assure that the validation or approval agreement included, but was not limited to, the following information:

- titles and level of validated courses (including any interim courses)
- details of delivery model (duration of course and mode of study)
- start and end/renewal date of the validation arrangement (this must match what is entered on the course template)
- arrangements for periodic review of the validation agreement (date and mechanism)
- name of delivery organisation and specified location(s) of the course delivery
- signature of agreement from the relevant authority within both organisations.

For courses approved by other recognised UK awarding bodies, a centre approval letter or certificate from the relevant awarding body will be required confirming that the provider is approved to deliver courses at specified locations, and plans for their renewal if the duration of the course exceeds the remaining period of validation or approval. We would also expect the letter or certificate signed by the awarding body to confirm that the centre is approved to deliver each course covered by the application.

Providers with degree awarding powers that are listed on the Department's list of Recognised Bodies are not required to provide evidence of validation.

The detailed information requirements for course eligibility checks will be set out on the HEFCE website.

## Additional Information Relating to Course Eligibility

**Please Note:** If a provider wishes to offer an existing course at a new location, as a different mode of study or changes validating partner these will be treated as new courses for specific course designation purposes and a separate application will be required in an appropriate application window.

The following paragraphs provide further guidance on the Department's definitions and expectations in relation to course eligibility for the purpose of specific course designation.

**Location:** Course designation is specific to the particular course(s) at a specific location(s) and not to the provider. Courses delivered at different locations or campuses will all require specific courses designation in their own right. Where courses are delivered partly at one location and partly at another by the same provider (i.e. split-site courses) the course should be specifically designated at both locations.

**Mode of study:** Mode of study should be either full-time or part-time and should also identify distance learning courses.

**Full-Time:** A full-time course is one where students are normally required to attend the institution, or elsewhere, for periods amounting to at least 24 weeks within the year and, during that time, they are normally expected to undertake periods of study, tuition, learning in the workplace, or sandwich work-placement that does not meet the criteria to be sandwich year-out, which amount to an average of at least 21 hours per week. For courses of two years or more, full-time students are normally required to attend the institution, or elsewhere, for periods amounting to at least for a minimum of eight weeks in the final year.

**Part-time:** Part-time courses must not exceed four times the period ordinarily required to complete a full-time course leading to the same qualification.

**Distance Learning:** Distance learning, sometimes called flexible or open learning, is a programme of study which enables the student to study at home. Students are not required to attend traditional on-campus courses, although there may be occasional and short periods of attendance. Distance learning courses can be classed as full-time or part-

time. A distance learning course may be treated as full-time if the students are expected to undertake the course for periods equivalent to full-time students that attend.

**Sandwich Course:** A course is defined as having a sandwich year-out if it includes a period of work-based experience and falls within the definition of 'sandwich' in Regulation 2(10) of the Education (Student Support) Regulations 2011 (SI 2011 No. 1986), as amended. This includes language year-abroad courses where the year abroad is spent working.

**Foundation Year:** A foundation year and other provision commonly referred to as 'Level 0', will be classed as part of a 'recognised HE course' only if they are an integrated part of a recognised HE qualification, such that both of the following apply:

- a. Students are already registered for the recognised higher education qualification at the same institution.
- b. Progression to the recognised higher education qualification is guaranteed, subject to satisfactory completion of the foundation year.

**Integrated Masters:** The qualification awarded on completion is equivalent to a first degree award i.e. an undergraduate award. If the courses are integrated Masters programmes with no degree awarded at the end of the third year then they continue to be eligible for student support for the four years.

**Postgraduate Courses:** Specific designation of postgraduate courses allows eligible students access to Disabled Students Allowance only. No other form of student support can be accessed for postgraduate courses.

**Exit Awards:** An exit award is an award given to a student who does not complete the requirements for the final award to which the course leads. Exit awards do not need specifically designating in their own right but will be treated as a new course, requiring specific course designation, if a provider intends to recruit to them as standalone awards.

**Pathways:** If a course has different subject pathways that result in different award titles these will require separate specific course designation, for example Business Management, Business Management with Finance and Business Management with Human Resource Management should be designated as separate courses.

**Duration of Course:** The list below shows the expected full-time duration of the main courses eligible for specific course designation. Where applications include courses which vary from the expected durations HEFCE may contact providers for further details.

- Undergraduate degree: Three years but may take four if there is a sandwich or foundation year
- Integrated Masters: Four years
- Foundation degree: Two years

- Diploma of Higher Education: Two years
- Higher National Diploma (HND): Two years
- Certificate of Higher Education: One year
- Higher National Certificate (HNC): One year

It is for providers to determine the duration of a course, in terms of the number of weeks of study per year. However, the Department generally expects similar courses, delivered by the same provider, to be delivered over a similar number of weeks irrespective of when the course commences.

Where courses are likely to attract the long course loan (i.e. they exceed 30 weeks and 3 days duration) you may be asked to provide further evidence to justify this as part of the application assessment process.

## **Other Information Required to Support Applications**

In addition to the information required to assess providers' financial sustainability, management and governance arrangements and the course eligibility requirements, providers will be expected to provide contextual information to support their applications including:

- copies of their policies and procedures on student attendance and dealing with student complaints; and
- details of any recruitment agencies that will be involved in recruiting home and EU students to designated courses.

## **Provider Responsibilities**

Providers will need to provide the Department, HEFCE, the Student Loans Company and Quality Assurance Agency with information about their viability and the way they operate. This information should be supplied directly by providers and not via their validating or awarding body. The basic information requirements are set out in this document and this will be supplemented by detailed information published on the HEFCE website. Wherever possible, providers will only be asked for information already available and in the public domain.

In accordance with the provider's own statutes and constitution, there should be effective arrangements for providing assurance that the provider:

- has a robust and comprehensive system of risk management, control and corporate governance;

- has regular, reliable, timely and adequate information to monitor performance including attendance, course completion and progression rates;
- plans and manages its activities to remain sustainable and financially viable;
- informs HEFCE of any change in its circumstances which – in the judgement of the accountable officer – is a material adverse change, as well as any significant developments that could impact on the mutual interests of the provider and the Department, HEFCE, SLC and/or QAA;
- complies with the conditions of course designation;
- sends HEFCE:
  - the annual monitoring return(s)
  - other information the Department, the SLC and/or the QAA may reasonably request to understand the institution's risk status;
- has effective arrangements for the management and quality assurance of data and information submitted to the Department, HEFCE, the QAA, the SLC and (if applicable)the Higher Education Statistics Agency; and,
- has an effective framework to manage the quality of learning and teaching and to maintain academic standards.

Responsibility for the quality of data used for internal decision making and external reporting rests with the provider itself.

The applicant is responsible for disclosing any information requested by the Department and other organisations during the application process, and providing any other information that may be relevant to the application and its operation after specific course designation is awarded. HEFCE or the Department may check the authenticity of supporting documents with the relevant source.

Failure to disclose or notify the Department and other organisations with such information may be treated as a failure to comply with the conditions of Specific Course Designation and the Secretary of State may use his discretion and apply sanctions as outlined in Chapter 8 in order to protect the student and public interest.

An Accountable Officer will be required to sign a declaration at the point of application to provide assurance that the provider is fit to receive public funds. If the Department decides to grant designation the Accountable Officer will be required to sign a declaration to confirm they accept responsibility for ensuring compliance with the conditions of designation. (See Chapter 5)

# Chapter 4: Application, Assessment, Decision Making Process and Administration

In all cases the designation application process is being administered by HEFCE with policy and decisions made by the Department.

## Application Process

Full details of the application process, including the application window dates, application forms and explanatory notes can be found on HEFCE's website at  
<http://www.hefce.ac.uk/whatwedo/reg/desig/>

There will be two **Specific Course Designation** application windows each year, normally in September and February. Each application window will be open for four weeks. These windows are intended for applications for courses starting in the following academic year e.g. applications in September 2015 are for courses starting in academic year 2016/17. If providers wish to apply for courses with start dates in the current academic year then these will be considered on a case by case basis. The assessment process will take up to four months to complete (subject to the provider submitting the necessary information).

The **Annual Re-designation** application window normally opens in September and is open for four weeks. The assessment process will take up to four months to complete (subject to the provider submitting the necessary information). This process is intended to review applications from already designated providers seeking confirmation of their ongoing designation status for the current and following academic year e.g. providers applying in returns in September 2015 will know the outcome in January 2016 confirming their status for the remainder of that and the coming academic year and their student number control (SNC) for 2016/17. Providers will not be allowed to recruit new students on any courses if they have not achieved Annual Re-designation.

## Assessing Applications

Once the provider has submitted an application to HEFCE, HEFCE will undertake an initial review of the application to assess whether the information provided is complete. Following this HEFCE will contact the provider, if necessary, to give them an opportunity to supply any missing information. If all the information is provided, HEFCE will undertake an analysis of the application against the criteria determined by the Department in consultation with the Student Loans Company, the Quality Assurance Agency and other bodies as appropriate.

During this process HEFCE may request further information or seek clarification on specific issues from the applicant provider. Once HEFCE has reviewed all of the information that has been submitted, it will prepare and submit advice to the Department.

HEFCE will not decide on the success or otherwise of applications. Final decisions will remain the responsibility of the Secretary of State.

## Designation Decisions

The Department will consider HEFCE's advice and make the specific course designation decision.

### Successful Applications

If the Department decides to grant designation, the Department will notify the provider that they propose to award designation, in principle. For those applying for Specific Course Designation this will include a reference to specified courses at specified locations. The provider must nominate an Accountable Officer, who must be the Principal or Chief Executive Officer or hold a position of equivalent status within the organisation. The nominated accountable officer will be required to sign and return an Accountable Officer declaration on behalf of the provider. The Accountable Officer is responsible for ensuring compliance with the conditions of designation as set out below. Once the declaration is returned the Department will confirm designation.

**With Specific Course Designation, it is important to note that designation is specific to the particular course(s) at a specific location(s) and not to the institution (except in the case of institutional level specific course designation). If a provider wishes to have additional courses specifically designated or if it wishes to deliver courses at different locations, these will need to be designated in their own right and the provider will need to apply for specific course designation in an appropriate application window.**

Once the Department has confirmed specific course designation the information is passed to HEFCE and the Student Loans Company for action.

### Incomplete Applications

If, after being given an opportunity to supply missing information by a specified deadline, providers fail to supply all of the information necessary for HEFCE to undertake an analysis of the application will be referred directly to the Department for decision. The Department typically rejects incomplete applications. Providers that have an incomplete application rejected may re-apply in the next application window.

### Unsuccessful Applications

If the Department is minded not to grant designation (either Specific Course Designation or Annual Re-designation), the Department may notify the provider of its intention before reaching a final decision setting out the reasons for the proposed decision. In that event the provider would have the opportunity to make representations to address the issues raised in the letter before the final decision is made. **This is not an opportunity to submit a brand new application, financial tables or revised accounts.** Providers will have 14 days to submit the relevant documentation.

Where applications are ultimately refused the reasons for rejection will be clearly set out in the decision letter.

In general, unsuccessful applicants will be advised that they have the option to re-apply no earlier than 12 months from the date of the original application subject to the unsatisfactory issue/s being resolved. Where the concerns identified are particularly serious a longer time period before resubmission may be specified.

If a provider has an application which is still being processed when the next application window opens they can submit an application for new courses as a repeat applicant. However, these will not be assessed until a final decision is reached on the initial application. If the initial application is ultimately successful the repeat application will be processed, if not the repeat application will not be considered and the provider will have to resubmit all courses again if they choose to reapply in future.

## HEFCE Register of HE Providers

HEFCE maintains a Register of specifically designated providers and courses, including the date and period of specific course designation and the validating or awarding body details. This is published on the HEFCE website and is now available at:  
<http://www.hefce.ac.uk/reg/register/>

Any change to a provider's designation status will be recorded on the register which is accessible to the wider public.

## Student Loans Company Courses Management Service

In order to allow students to apply to the Student Loans Company (SLC) for student support funding, specifically designated courses need to be uploaded onto the SLC's Courses Management Service (CMS). Under the new arrangements, where alternative providers have specific course designation the SLC will upload details of any new and existing specifically designated courses directly onto the new database following confirmation by HEFCE on the Department's decisions. Alternative providers with specifically designated courses will be requested to provide fee, term date and intake information for each specifically designated course to SLC who will then enter the course details to CMS on behalf of the alternative provider.

Alternative providers with institutional level specific course designation will be able to submit details of their eligible HE courses directly onto the CMS themselves. Guidance on entering course details to CMS will be issued to providers granted institutional designation to minimise operational errors.

**Please Note: providers should only request that the SLC make live on their systems courses and locations that have been confirmed as specifically designated. The Student Loans Company will be monitoring this closely. Any cases of non-compliance will be reported to the Department.**

## **Advice to students**

Once courses are available on the SLC and the SLC has launched the student finance application system for the relevant academic year and mode of study, providers can advise eligible students that they can start submitting their student finance applications.

# Chapter 5: Conditions of Specific Course Designation and Annual Re-Designation

## Conditions of Designation

If the Department has granted designation, a nominated accountable officer is required to sign a declaration to confirm that he or she accepts responsibility for ensuring compliance with the conditions of designation.

The conditions of designation are set out below:

- 1) On-going compliance with the criteria and conditions of designation as set out in the Department's guidance and providing the Department with clear assurance to this effect as specified in the Guidance;
- 2) All institutions, other than those with UK Degree Awarding Powers, must apply to have their courses re-designated every year;
- 3) Maintaining high quality standards of teaching and learning – as evidenced by successful outcomes of QAA Higher Education Reviews (Alternative Providers) and QAA annual monitoring, and successful compliance with agreed QAA action plans;
- 4) Providers are required to deliver satisfactory student retention and completion rates – which will be benchmarked against other providers. These benchmarks will be developed by the Department and HEFCE and will take into account factors such as differences in student mix, for example age, subject, domicile and household residual income;
- 5) From 1 September 2015 to provide information relating to their students' enrolment and progression to the Department. This includes information about recruitment and attendance policies.
- 6) Providers must allow the Department access to their premises, records and staff. The Department shall give alternative providers reasonable advance notice in writing of proposed visits to the provider or its sub-contractors – but providers are required to give **an immediate right of access to their premises and records** where the Department has **a reasonable suspicion that the provider or its students are engaged in fraudulent activity**;
- 7) Providers must not draw down tuition fee payments for a student from the Student Loans Company before that student has been registered with the relevant Awarding Body;
- 8) Providers must not undertake any activity which brings the sector into disrepute;
- 9) Providers that wish to change the location of an already designated course must apply to the Department, through a change of circumstances form (available from the HEFCE website) that must be sent to and received by HEFCE at least 3 months in advance of the proposed change of location taking place;

- 10) Providers must notify the Department, through HEFCE, of any change of Director or equivalent, or their circumstances (for example, if an individual is disqualified as a director or trustee or is sanctioned by a professional body) as and when those changes take place – to enable a fit and proper person test to be applied;
- 11) All providers (irrespective of the number of eligible students studying designated courses) are required to subscribe, and submit data to, HESA and to pay a subscription or annual fee to the QAA, in addition to meeting the costs of periodic QAA reviews and monitoring visits where applicable;
- 12) Ensuring the number of eligible students recruited to specifically designated courses collectively does not exceed any student number control allocated to the provider each year where applicable. It is the providers' responsibility to make sure the control is not breached;
- 13) In the case of small providers the total number of students across all years that access student support on specifically designated full-time courses does not exceed their allowance in an academic year;
- 14) Meeting obligations to the SLC to provide information necessary to administer student support in line with the regulations including ensuring term dates are only input for specifically designated courses at specified locations on the SLC system (see also Requirements of the SLC below);
- 15) Not franchising or sub-contracting designation to a third party without the Department's consent;
- 16) Being responsible for any information advertised to students in literature or websites about the availability of student support for particular courses;
- 17) Being held fully accountable for the actions of any third party recruitment agency the provider chooses to use, and ensuring that any fees the provider pays to such agencies in respect of the recruitment of students are disclosed to the student before they enrol;
- 18) Advising the Department if, at any time, any action or policy under consideration by the provider appears to be incompatible with the criteria and conditions of designation set out by the Department in the Guidance and to inform the Department in writing immediately if they decide nevertheless to proceed with such an action or policy;
- 19) Ensuring that the use to which the provider puts funds received from the SLC is consistent with propriety and regularity and in particular the purposes for which those funds were given;
- 20) Ensuring the provider has the appropriate financial management, governance, and operational systems in place to deliver the designated courses;
- 21) Notifying HEFCE of any change of circumstances set out in the Guidance. In particular: any adverse variance in the financial position which in the accountable officer's judgement is material to the institution's financial sustainability; any regulatory action (such as revocation of a Tier 4 licence); and any fraud, serious weaknesses, or any major accounting breakdown reported to him or her by external or internal auditors or which come to light by any other means.
- 22) Subscribing to the complaints handling scheme operated by the Office of the Independent Adjudicator for Higher Education.

**For 2016/17, having consulted providers, we are introducing the following additional conditions of designation:**

### **English Language Requirements**

Providers must ensure that all students recruited onto courses designated for student support meet the minimum language requirement assessed at Common European Framework of Reference for Languages (CEFR) level B2, equivalent to 5.5-6.5 on the International English Language Testing System (IELTS) framework, or equivalent.

This will not be a condition of re-designation in August 2015, however we will be assessing compliance with any students recruited in for the 2016/17 academic year as part of annual re-designation for 2017/18, which will start in September 2016 (and in subsequent years).

It is for institutions to determine what proof will be necessary to determine individual student proficiency. Providers must be able to demonstrate that there are robust and consistent checks in place to ensure compliance. In line with existing lighter touch requirements, we do not propose to apply this requirement to alternative providers with degree awarding powers, who do not undergo annual re-designation.

### **Key Information Set**

From 2016/17 providers must provide the Key Information Set which requires them to participate in the following key surveys:

- the Destination of Leavers from Higher Education;
- the National Student Survey; and,
- any other requirements placed on other HE providers.

Institutions must provide the following specific information on:

- how courses are taught and assessed;
- how courses are accredited;
- how much courses cost;
- study patterns for courses;
- financial support available for students; and,
- whether professional, statutory and regulatory bodies recognise these courses.

Key Information Set data will cover both courses designated for student support and those without designation. The cost of this survey must be borne by providers. Providers may be subject to sanctions in the event of a breach of any of the criteria or conditions of designation. Further information on possible sanctions is provided in Chapter 8.

## Provision of Information to HEFCE

The governing bodies of all alternative providers (or the equivalent controlling body appropriate for the corporate form) with specific course designation for student support are required to provide information to HEFCE. HEFCE will request such information as is necessary to monitor alternative providers to ensure continuing compliance with the conditions of specific course designation. The governing bodies of alternative providers are legally required to provide this information under the Further and Higher Education Act 1992.

## Provision of Information to the Department

From 1 September 2015 the governing bodies of all alternative providers (or the equivalent controlling body appropriate for the corporate form) with specific course designation for student support might be required to provide information relating to their students' enrolment and progression to the Department. This may be a requirement to provide information about the alternative provider's recruitment and attendance policies, and data relating to: enrolments, drop outs, progression, performance, course completion and qualifications awarded. The Department may request additional information or regular reporting of this information from specific alternative providers as and when it deems necessary, for the purposes of performance monitoring. We require this information to assess whether providers are delivering value for money for the public purse. In providing this information we expect the records to be presented in an accessible format and to be verifiable.

QAA, BIS and HEFCE are working to improve data collection and information sharing to minimise the burden on providers to submit data more than once.

Where the Department has concerns that providers are not meeting their obligations to provide this information, depending on the nature and severity of these concerns they will either be considered as part of the annual re-designation process or may result in the Department implementing designation enforcement action as described in Chapter 8.

## Higher Education in Alternative Provider Early Statistics survey (HEAPES)

All alternative providers that are allocated a Student Number Control (SNC) are required to complete a HEAPES survey each year. It will be completed in the autumn by alternative providers subject to SNCs and is used to monitor recruitment against each provider's SNC allocation as set by the Government. The HEAPES survey may also be used to set the 2015/16 SNC allocation, especially for those that opted in to HEAPES14.

From 2014 new providers that have not been allocated a number control were given the option to participate in HEAPES.

Further details can be found on the HEFCE website:

<http://www.hefce.ac.uk/data/collect/heapes/>

## **Submission of Data to the Higher Education Statistics Agency (HESA)**

Alternative providers with designated courses (including those previously treated as small providers (see Chapter 7) will be required to subscribe, and submit data, to HESA as a condition of specific course designation. Subscriptions commenced in the 2014/15 academic year will include all providers with specifically designated courses from the new academic year 2015/16. Further details on HESA subscriptions will be published on the HESA website.

## **Requirements of the Student Loans Company**

Providers with specific course designation are expected to meet their obligations to the SLC to provide the information necessary to administer student support in line with the student support regulations. The information requirements relate to the following areas:

- Data related to the course of study that is designated for support;
- Verification that the fee charged to the student, and the course quoted by the student in their application are accurate and directly relate to the student's course of study;
- Information related to student registration and attendance;
- Confirmation of changes of any circumstances that affect the student's entitlement; and,
- Timely reporting of when a student withdraws from their course.

Where SLC have concerns that providers are not meeting their obligations to provide the information necessary to administer student support in line with the student support regulations these will be reported to HEFCE and the Department. Depending on the nature and severity of these concerns they will either be considered as part of the annual re-designation process or in some cases may result in the Department implementing designation enforcement action as described in Chapter 8.

## **Registration of Students with Awarding Bodies**

It is a condition of designation that providers must not draw down tuition fee payments for a student from the Student Loans Company before that student has been registered with the relevant qualification Awarding Body/Organisation.

## Change of Location

Providers that wish to change the location of an already designated course **or add a site that forms part of a campus of an already designated location must apply** to the Department through a change of circumstances form which is available on the HEFCE website. This must be sent to and received by HEFCE at least 3 months in advance of the proposed change of location taking place.

Apart from exceptional circumstances beyond a Provider's control e.g. a building becoming unsafe necessitating urgent action, in the event that a provider fails to give the Department the required 3 months' notice, not only will the new location not be designated for new students, the Secretary of State may also consider withdrawing student support from students that started to study at the previous location

## Changes of Alternative Provider Directors: Fit and Proper Person Test

It is a condition of designation that where any changes of Director occur at an alternative provider, these are notified immediately to HEFCE – to enable a 'Fit and Proper' person test to be undertaken, which includes but is not limited to:

- a check against public registers of disqualified directors (available on Companies House) and disqualified trustees (available on the Charity Commission website);
- a review of County Court Judgements;
- where professional affiliations / memberships are declared, these are verified with the professional organisations' member lists (where these are publicly available); and,
- a general internet search to identify publicly available information of relevance.

## Bringing the Sector in to Disrepute

It is a condition of designation that alternative providers must not engage in any activity that brings the sector into disrepute. Alternative providers must operate honestly and with integrity. Alternative providers are expected to display high standards of probity and to uphold high ethical standards at all times, and to work in harmony with the Department and partner organisations and to co-operate fully.

## Right of Access

It is a condition of designation that alternative providers must allow the Department access to their premises, records and staff.

Generally, the Department shall give alternative providers reasonable advance notice in writing of proposed visits to the provider or its sub-contractors.

The Department or its representatives, the National Audit Office, the SLC, HEFCE and the QAA shall have the right to visit all or any site(s) and view operations relating to courses that are designated for student support and to inspect relevant documents and interview students and the Provider's staff during these visits in order to:

- examine, audit or take copies or verify any original or copy documentation, accounts, books and records of the Provider and its subcontractors that relate to designated courses;
- visit, view or assess the design, management and delivery of designated courses at any premises where those operations are carried out (including those of any sub-contractors) and conduct relevant interviews, including interviews with students, during these visits at any reasonable time;
- carry out examinations into the efficiency and effectiveness with which the provider has used funds provided by the SLC for the delivery of courses designated for student support.

Alternative providers shall, if required by any of the representatives stated above, provide appropriate oral or written explanations.

The Department reserves the right, at any reasonable time, and as it may deem necessary, to require the Provider at its own cost to:

- provide evidence of financial resources and the level of turnover sufficient to enable it to continue to deliver designated courses;
- provide such assurance as the Department may require that the delivery of the designated courses complies with the conditions of designation; and,
- obtain a report by an independent accountant of the Department's choice on:
  - the financial systems and controls operated by the Provider or its subcontractors;
  - the accuracy and regularity of funding claims in respect of payments claimed or received in relation to the designated courses;
  - the evidence held by the Provider or its subcontractors to support delivery of designated courses in accordance with the terms and conditions of designation.

## Fraud and Irregularity

The Provider shall notify the Department immediately where it becomes aware of any instance of suspected fraud or financial irregularity including, but not limited to, cases of:

- collusion with members of the staff of the Department;
- computer fraud;
- the submission to the Department of inaccurate, incomplete, misleading or falsified information for the purpose of funding;
- fraud involving staff at the provider;
- fraud involving awarding bodies;
- fraud involving sub-contractors; and,
- fraud involving students.

As long as nothing in these instances require the Provider to do anything which may cause it to infringe any law.

Where the Department has reasonable cause to suspect that fraud or irregularity has occurred in relation to the delivery of designated courses and associated payments, the Department shall have the right of access to the Provider's premises at any reasonable time with or without notice to examine and remove or copy all relevant documents and records including electronic records and to interview the Provider's employees or agents engaged with the delivery of the Services.

Where the Department has reasonable cause to suspect that fraud or irregularity has occurred in relation to the delivery of designated courses the Department reserves the right to suspend payments whilst it investigates; and/or requires the Provider to suspend recruitment of students.

The Department may from time to time brief the Provider as to the co-operation and assistance it reasonably requires to undertake this investigation including the provision of information regarding fraud by students. The Department shall provide a named contact or telephone answering machine for receiving such information.

## Standards, outcomes, quality assurance and quality assessment monitoring

The Government expects all higher education providers to maintain high quality standards of teaching and learning for all their courses. Our system has a worldwide reputation for quality and all providers need to help strengthen this reputation by rigorously monitoring standards and taking prompt remedial action where necessary. We also expect providers to continually look for areas of further improvement and enhancement.

As set out above, the Department will require providers to submit information on student progression, drop out and course completion. This will be reviewed annually against HEFCE produced benchmarks. The Department then may investigate further and take any necessary action. This will be triggered where performance differs significantly from the benchmark.

All providers will be subject to annual monitoring by the QAA. From September 2015 this will take the form of an annual monitoring visit. This will explicitly consider quality indicators including retention and completion rates. Prior to the visit providers will need to complete an annual monitoring return which will include reporting of material changes as well as an assessment of progress and performance and relevant supporting data.

QAA will inform the Department and HEFCE if any information in the monitoring process leads to any doubt about a provider maintaining expected levels of quality.

The provider will need to maintain successful Higher Education Reviews (Alternative Provider) which usually requires re-assessment every four years in order to maintain designated status once approval has been given. The Department and HEFCE will be informed when an alternative provider with courses designated for student support receives a published QAA review judgement including any with a 'less than a satisfactory' outcome. These judgements will impact on specific course designation status – please see Chapter 8 and Annex D for details. Review reports and judgements are published in the public domain.

Where the Department has any concerns about the quality of provision or maintenance of academic standards it will require immediate action. Sanctions are set out in full at Chapter 8 and can include: a block on further recruitment; reduction of SNCs; a suspension of payments; the issuing of an enforcement notice; and, in the most serious cases, de-designation.

## Concerns about the standards and quality of higher education

In addition to the above, all providers should note that by applying to be reviewed and monitored by the QAA, they become liable to be investigated in the event of a concern about their management of academic standards or quality which proves eligible for investigation under QAA's Concerns scheme.

QAA investigate concerns about the standards and quality of higher education provision raised by students, staff and other people and organisations, where QAA believe these concerns indicate serious systemic or procedural problems.

Details of QAA's Concerns scheme can be found at  
<http://www.qaa.ac.uk/Complaints/concerns/Pages/default.aspx>

In the event that a full investigation is required, costs would need to be covered by the provider. If a Concern is upheld, QAA will refer this to the Department, who will review next steps on a case by case basis. The Department will not make any designation decision (either annual re-designation or specific course designation) while a concerns designation is underway.

## **The Office of the Independent Adjudicator's Complaints Handling Scheme**

All providers of higher education courses with students in receipt of student support funding will be legally required to join the complaints handling scheme operated by the Office of the Independent Adjudicator for Higher Education. This includes all alternative providers with designated courses. This will take effect from 1 September 2015 and will mean that all higher education students in England, wherever they study, can take their unresolved complaints to the Office of the Independent Adjudicator. More information on the OIA and their role can be found at <http://www.oiahe.org.uk>

# Chapter 6: Change of Circumstances

One of the conditions of designation is that providers must notify HEFCE of any change of circumstances that may affect their designation status.

The Department retains the right to review a provider's designation status following a notification of change. Depending on the nature and extent of these changes providers may be required to submit a new designation application and the original designation may be brought to an end.

Failure to notify HEFCE may be deemed to be a failure to comply with the conditions of the designation. Where this is the case the provider may be subject to sanctions as outlined in Chapter 8. These will be determined on a case by case basis.

The following sections provide detailed guidance on what changes should be reported and the process for reporting them as part of the specific course designation process. Details of how to report changes can be found on the HEFCE website  
<http://www.hefce.ac.uk/reg/desig/>

## Changes affecting status of the quality assessment review

As part of the annual quality monitoring process all providers have to submit an annual return to the QAA and, from September 2015 this will include a monitoring visit by QAA. This is a condition of specific course designation, including alternative providers with Institutional Level Specific Course Designation. The QAA's quality monitoring process is conducted separately by them but the outcomes feed into the Department's decisions on annual re-designation. Providers are required to notify QAA of any significant changes in student numbers, type of provision and/or other material changes which could trigger an extended monitoring visit or a partial or full HE review. More information on the QAA's quality monitoring process can be found at the following:

<http://www.qaa.ac.uk/en/ReviewsAndReports/Documents/Annual-Quality-Monitoring-for-Specific-Course-Designation-purposes.pdf>

## Changes impacting on financial sustainability, management and governance status

The Accountable Officer is required to inform HEFCE immediately if there are any material changes that could affect the financial sustainability, management and governance status or quality of provision and student interest. These include but are not limited to:

- notification of changes in contact details, registered office or trading address;
- notification of change of institutional ownership; (see below)
- changes in directors, trustees, shareholders, principal or accountable officer and other key personnel ; (see below)

- merger with another college or acquisition of a new branch;
- changes impacting the fit and proper persons test;
- changes in governance arrangements ;
- non-compliance with student number control;
- adverse regulatory outcome (including quality assurance and suspension or revocation of Tier 4 licence) or loss of validation;
- significant legal action;
- materially increased gearing (whether this is from external borrowing or loans from directors, shareholders or other related parties);
- reputational risk;
- any adverse variance in the financial position is material to the institution's financial sustainability; and,
- any fraud, serious weaknesses, or any major accounting breakdown reported to the Accountable Officer by external or internal auditors or which come to light by any other means.

## Change of Ownership and Control

For the purposes of Specific Course Designation a change in control refers to a change of 50% of individuals, shareholders or companies in control of the organisation. For example, 50% or more change in the shareholding or the beneficial interest.

A change in control will trigger a review of the specific course designation at the Provider. The new individual(s) in control will be required to apply for Specific Course Designation in their own right if they acquire specifically designated courses as part of the educational concern and wish to retain that specific course designation.

In practice this could be a straightforward assessment of evidence that may already have been provided to HEFCE for assurance that the Quality and Financial Sustainability, Management and Governance criteria continue to be satisfied following the acquisition and that any new courses are eligible for designation for student support purposes.

The rationale for the requirement, explanation of what will constitute a change of ownership or control and the process and timescales for application are set out in Annex E

## Changes affecting course eligibility status

All changes to courses must be reported to HEFCE by email. Depending on the nature of the change these may be considered as a change to an existing course or a new course.

Changes to an existing course will be:

- Correction of typing error in original course template
- Change of course title

Changes which require a new course application are:

- Change of location
- Additional location/s
- Change of validating body
- Change from franchise to validation or vice-versa
- Exit awards becoming courses in their own right
- Change to the level of qualification
- Change to the mode of study

# Chapter 7: Student Number Controls (SNCs) and the Performance Pool

## Overview of Student Number Controls (SNC)

Full time SNCs were introduced for alternative providers following the consultation 'Applying Student Number Controls to Alternative Providers with Designated Courses'. We left open the possibility of introducing student number controls for part time, distance and franchised courses in later years.

In January 2015, we announced our approach to full time SNCs at alternative providers in 2015/16. We are removing and relaxing controls for those providers with UK degree awarding powers. We are retaining controls on all other providers and tightening those controls where we have concerns about quality.

In February 2015, we announced that we were introducing part time and distance learning number controls at alternative providers in 2015/16. Almost half of designated courses are part time or distance learning and we need to ensure that expansion of these courses is within the constraints of what Government can afford to support. We will be issuing an SNC for 2015/16 to the small number of providers where more than 50 students claimed student support in 2013/14.

We also set out that we would develop controls for those courses which alternative providers deliver for HEFCE funded institutions under franchise. We have asked HEFCE to issue a statement from BIS (to HEFCE funded providers) to inform them that we will treat all franchise provision as designated provision for 2015/16 only – as we did for 2014/15. HEFCE will also collect additional data on franchised provision in the 2015/16 academic year.

For 2016/17 we will consider institutions' plans to expand this provision on the grounds of affordability and limit recruitment to these courses, if and where that proves necessary.

## Full Time Student Number Controls

From 2015/16 we are removing SNCs for those alternative providers which currently have UK degree awarding powers, bringing them into line with the HEFCE-funded sector. As in the HEFCE funded sector, these providers have been required to review their arrangements with their student union/organisation for identifying and resolving early signs of student concerns or complaints and implement any changes which are necessary for the start of the 2015/16 academic year. BIS has also asked these providers to ensure their governing body receive an annual review of such issues and how the institution has resolved them. We are seeking annual assurances from these providers on the effectiveness of their arrangements as part of the annual monitoring process which is administered by HEFCE.

For all other alternative providers, full time SNCs will remain.

Providers where a majority of students (defined as more than 50% of eligible full-time students that were returned in HEAPES 14) are studying for qualifications awarded or validated by organisations with UK degree awarding powers, will have the flexibility to increase the number of full time students they recruit by 20% in 2016/17 compared to 2015/16. The High Grades policy of exempting students with A level grades of ABB or higher from SNCs no longer applies. Instead, the total number of students with high grades that were returned as exempt in 2014/15 has been added to the student number control for 2015/16, on which the 20% flexibility has been calculated, to arrive at the SNC for 2015/16.

No provider where a majority of students (defined as more than 50% of eligible students that were returned in HEAPES14) are studying for qualifications which are not awarded or validated by an organisation with UK degree awarding powers will be allowed to recruit more full time students in 2015/16 than in 2014/15. The High Grades policy no longer applies and the total number of students with high grades that were returned as exempt in 2014/15 will be added to the student number control for 2015/6.

In addition, we said, in the guidance we published in August 2014, that we might review a provider's SNC in the light of their student retention and completion rates. We announced on in February 2015 that we now intend to follow this approach. We have written to those providers where we had concerns to inform them of our intention or decision to review their student number control for 2015/16.

## **Small Providers and Providers with a full-time Student Number Control (SNC) below 100**

For the 2013/14 academic year, those providers with fewer than 50 students in receipt of student support were treated as a 'small provider' and were given the opportunity to opt out of some of the data requirements placed on other providers. This included the requirement to submit student number data to HEFCE and the requirement to subscribe to HESA. Small providers were given the choice to opt out of these requirements on condition that the total number of full-time students at the provider receiving student support remained at 50, or below.

In addition, providers that are awarded specific course designation **for the first time** for 2013/14 or 2014/15 have also been treated as small providers, meaning that the total number of full-time students accessing student support at those providers has been limited to 50.

From the 2016/17 academic year, all small providers where the majority of full-time students in the academic year 2015/16 are studying for qualifications validated by organisations with UK degree awarding powers will be offered the choice of either staying within an overall cap of 50 or moving to a full-time SNC of 100. In addition, providers with a full-time SNC of less than 100 where the majority of full-time students are studying for qualifications validated by organisations with UK degree awarding powers will be offered the choice to increase their SNC to 100 - **unless the 20% uplift will anyway take them to an SNC above 100'**.

Those providers that meet the definition above, and wish to move to a student number control limit of 100 from 2016/17 will be given the opportunity to do so during the annual re-designation process – guidance which will be published by HEFCE in autumn 2015. Providers will be asked to confirm that the majority of their students will be studying for qualifications validated by

organisations with UK degree awarding powers. If subsequent information shows that this was not the case, BIS reserves the right to take the actions and sanctions listed in Chapter 8 as appropriate.

The moratorium on Higher National qualifications remains in place and so we expect to see new designation applications for 2016/17 to be predominantly qualifications awarded or validated by organisations with UK degree awarding powers. New providers that successfully apply to have those courses designated for 2016/17 will be offered the choice of being either a 'small provider' with a limit of 50 students, or an SNC of 100.

## **Introducing Student Number Controls (SNC) to Part Time and Distance Learning**

In our original consultation on applying student number controls to alternative providers (November 2012) we left open the possibility of extending controls to part time and distance learning courses. Almost half of designated courses are part time or distance learning and we need to ensure that expansion of these courses is within the constraints of what Government can afford to support. So, the Government has now decided to introduce a control on entrants to all part-time and distance learning courses (full-time and part-time) at alternative providers for 2015/16. This control will apply to all eligible entrants to all part-time courses at alternative providers. It will apply to entrants to all distance learning courses regardless of whether the course is designated as full-time or part-time or, indeed, both. The High Grades policy no longer applies. So, no exemptions will be made on the basis of entrants' existing qualifications.

Broadly speaking, we will implement part-time and distance learning number controls on the same basis as controls for full-time students. Providers where a majority of students (defined as more than 50% of part-time and distance learning students who were drawing down support from the SLC in 2013/14) is studying for qualifications which are awarded or validated by an organisation with Degree Awarding Powers will have the flexibility to increase their part-time and distance learning numbers by 20% in 2015/16 compared to 2013/14.

Providers where a majority of students (defined as more than 50% of part-time and distance learning students who were drawing down support from the SLC in 2013/14) are studying for qualifications which are not awarded or validated by an organisation with UK degree awarding powers will not be able to increase their part-time or distance learning numbers in 2015/16 compared to 2013/14. These controls will not, as a rule, apply to providers with UK degree awarding powers.

As a general rule, we will use 2013/14 as the baseline year for calculating part-time and distance learning SNCs. We will use SLC data to calculate a SNC which will apply to all eligible students who are receiving student support. Where, however, this is not possible (for example, where a course was first designated in 2014/15) we will use 2014/15 data. Where it is necessary to rely on 2014/15 data, we will make reasonable assumptions about recruitment during the rest of the academic year. We will offer providers the opportunity to discuss their provisional part-time and distance learning SNCs with us. If the use of data from two years ago in setting the SNC baseline should cause demonstrable unfairness, we will consider adjusting the figure, as an exception to the general rule.

These exceptional circumstances include, but are not limited to, situations where:

- a provider's financial sustainability depends on a previously planned growth of part-time and distance learning provision which is above their SNC allocation; and/or,
- where a provider has already incurred expenditure investing in such growth.

Providers will need to provide evidence to support their case for exceptional treatment.

On the basis of 2013/14 recruitment levels we expect to issue a SNC to only a small number of providers. All others will be treated as small providers with an allowance of 50.

Small providers will be given an allowance for students accessing student support for part-time and/or distance learning courses for the first time in 2015/16. Those with fewer than 50 students on part-time or distance learning courses accessing student support across all years of study will be exempt from the part-time and distance learning student number control, provided they do not grow beyond this allowance. Those that do will no longer be treated as small providers and will become subject to the additional conditions of designation, including the student number control.

New providers gaining designation in 2016/17 will be treated as small providers and be given an allowance of 50 part-time and distance learning students accessing student support in total across all years of study.

In our March 2015 guidance we set out that we would introduce SNCs for part-time and distance learning provision in 2015/16. We said that we would calculate these SNCs on the basis of 2013/14 baselines (or 2014/15 where the 2013/14 figure was zero). We said that we would keep HN provision at previous levels but that we would allow an increase of 20% on baseline for predominantly validated provision on baselines. That remains the position. With regard to SNCs for part-time and distance learning in 2016/17 we will develop and communicate our policy in the light of HEAPES 2015 data in early 2016.

Each year the Department will decide if there will be a mechanism available if providers wish to grow beyond the allowance of 50. This will be announced in separate guidance.

## Method for Controlling Student Numbers

SNCs apply to UK and EU students starting full-time, part-time or distance learning undergraduate study or post graduate initial teacher training study on specifically designated courses in the academic year. The controls will apply to most students who are eligible for publicly funded student support, regardless of whether or not they have in fact accessed publicly funded student support. The number controls will operate in 2015/16 on the basis of the following key points:

- there will be two separate SNCs. The first will apply to all specifically designated full-time courses. The second will apply to all specifically designated part-time and distance

learning courses (regardless of whether those distance learning courses are designated as full- time, part- time or, indeed, both).

- each of these separate SNC is a single limit per provider and will apply to all of the provider's courses which have been specifically designated for student support purposes. This means that the provider must decide how to apportion their numbers to designated courses and gives flexibility for providers to move numbers from one designated course to another but not between part- time/distance learning and full time provision.
- where a provider has a subsidiary, parent company or another linked organisation which has designated courses each student number control will take account of the relationship between providers. This means that linked organisations, in this instance, will not be judged to be small providers. All linked organisations will therefore be subject to the student number controls and data reporting requirements accordingly, irrespective of their size.
- the control on full- time students and the control of part- time and distance learning students are separate. Some providers may be subject to both controls. Some providers may be treated as small for the purposes of one control and large for the purposes of the other. Providers cannot transfer any under recruitment against one control to the other control.
- SNCs do not apply to non-designated courses, which gives the provider freedom to increase numbers on non-designated courses without pressure on the public purse.
- SNCs do not apply to most non-EU students, as they are not eligible for publicly funded grants and loans. In addition, students who cannot access student support because they are aiming for an Equivalent or Lower Qualification (ELQ) will not be subject to number controls.
- the number control will only apply to students starting study, rather than to those in all years of study at a provider. (Note: the limit of 50 students for small providers is different and does include students in all years of study)
- providers should also note that the number control applies to students who study with the provider on designated full-time courses for at least two weeks, or have their attendance on such a course confirmed positively to SLC or the Student Awards Agency Scotland. Students who withdraw (or transfer to a course that is not a designated course) before they have completed two weeks of study would not therefore be counted in the SNC, unless the provider has positively confirmed attendance.
- For 2016/17, SNCs will not apply to any postgraduate students aside from those on postgraduate initial teacher training courses. Other post graduate students could come under number controls in future years, subject to Ministerial decisions.
- BIS retains the right to introduce SNCs on entrants to any provider or any mode of study where we have concerns about student retention or completion. We will write to any provider to which we intend or have decided to introduce a number control.

## Implementing the Performance Pool

The Government consulted on implementing a “basic” and “performance pool” student number control system for alternative providers. These policies were confirmed on 22 July 2015 and will apply from the 2016/17 academic year.

To facilitate growth at providers primarily offering high quality degree level provision (defined as providers where more than 50% of eligible students that were returned in Higher Education Alternative Provider Early Statistics Survey (HEAPES) 2015 are studying for qualifications which awarded or validated by an organisation with UK degree awarding powers), alternative providers that pass the Annual Re-designation will receive a “basic” increase of 20% on their previous year’s student number control, should they wish to do so. Providers who do not want this additional allocation should make this clear at Annual Re-designation.

The best performing alternative providers are eligible to apply for additional student number control allocations of up to a further 10% beyond the “basic” 20% increase (so 30% total) at Annual Re-designation. This higher SNC will then become the provider’s baseline for the next academic year.

For 2016/17, performance will be determined by BIS reviewing quantitative and qualitative information. Providers that want to benefit from the 30% increase will be expected to provide evidence on:

- student drop-out rates;
- recruitment and attendance policies; and,
- data relating to: enrolments, progression, course completion rates, and qualifications awarded.

## Higher National level

There will be no changes to SNC arrangements in the 2016/17 academic year for institutions predominantly offering Higher National level courses (defined as providers where a more than 50% of eligible students that were returned in HEAPES 2015 are studying for qualifications which are not awarded or validated by an organisation with UK degree awarding powers), with a view to implementing a “basic” and “performance pool” allocation system from the 2017/18 academic year.

## Monitoring, Penalties and Sanctions for Providers with a Student Number Control (SNC)

Each year providers with an SNC will need to complete a HEAPES survey. This will monitor recruitment of controlled students (those that count against a provider's SNC allocation). Providers are also required to submit data to HESA on an annual basis.

Working with HEFCE, the Department will use the HEAPES15 and SLC data to monitor providers' recruitment against their SNC allocation.

During 2015/16 and beyond, HEAPES data will be checked using data from other sources, including HESA, the SLC, and Pearson Education Limited, as they become available. If we find that the HEAPES data were inaccurate, we may enforce sanctions, including the withdrawal of specific course designation which will lead to the removal of any SNC(s). We will also reassess recruitment against the 2015/16 SNC allocation using these other data sources, and will review any sanctions for over-recruitment that may apply.

We regard a provider as over-recruiting if it recruits above any of its SNC allocations. When this happens, we will consider giving providers the option to repay a sum corresponding to the estimated average cost of providing student support, multiplied by the number of students recruited above the SNC allocation. In this context, student support includes both tuition fee loans and maintenance grants and loans. The rate per full time excess student will be up to £5,000 per year of study, reducing pro rata for excess part time students, depending on the intensity of study.

If a provider chooses not to repay the penalty for over recruitment this will be treated as a failure to comply with the conditions of specific course designation. In these cases the Secretary of State may use his discretion to apply sanctions, as outlined in Chapter 8. These will be considered on a case by case basis but are likely to lead to loss of designation in these circumstances.

The Department will carry out retrospective monitoring after the end of the 2015/16 academic year and at this point we will inform providers of any repayments necessary to avoid sanctions. Finally, since students can claim student support up to 9 months after they begin their course, we will continue to monitor SLC academic year 2015/16 data throughout 2016/17 and will if necessary calculate (additional) repayments if at some later point we find that the allowance has been (further) exceeded.

## Next Steps

HEFCE will make available, on the Department's behalf, providers' SNCs for 2016/17, where they apply, via the secure HEFCE extranet.

HEFCE will be carrying out a survey of student numbers in autumn 2015. This will be the third annual HEAPES survey.

Further details on which students are covered by student number controls will be explained in full in the HEAPES15 guidance, which will be published by HEFCE in autumn 2015. In the meantime, providers are advised to refer to the HEAPES14 guidance.

# Chapter 8: Sanctions and De-designation for Alternative Providers

Designation is subject to providers meeting a range of on-going conditions. In order to ensure providers are held accountable and comply with those conditions and to protect the student and public interest the Department retains the right to review specific course designation at any time. The Alternative Provider Intelligence Unit, a joint team consisting of staff from BIS and HEFCE, will work with providers to ensure they are on track to deliver against the conditions of designation.

The circumstances where the Department might review designation status may include (but are not restricted to):

- 1) Concern or evidence that the provider is not complying with the conditions of designation, including student number controls or the 50 allowance, either through annual monitoring, annual re-designation or from information received in year, including information that relates to academic performance such as drop out, withdrawal, completion, and success rates;
- 2) Information from QAA that a provider with specific course designation has had a less than successful QAA Higher Education review judgement or QAA annual monitoring visit (see Annex D) or has been subject to the QAA Concerns scheme and had a concern upheld;
- 3) Non-compliance with QAA or Departmental action plans;
- 4) Concerns that the provider is not securing value for money, for example in terms of student retention, achievement, or course completion rates;
- 5) Other concerns about the quality of their provision;
- 6) Failure to disclose or notify the HEFCE of any change of circumstance which may impact on the status of designation (as outlined in Chapter 6);
- 7) Failure to disclose or notify HEFCE of any change of Director;
- 8) Where the Director of an alternative provider fails the 'fit and proper persons' test;
- 9) Information from the SLC that providers are not meeting their obligations to the SLC to provide the information necessary to administer student support in line with the student support regulations;
- 10) Information that providers have drawn down tuition fee funds from the Student Loans Company without first registering students with the relevant awarding body;
- 11) Concerns about a provider's financial viability;
- 12) Where providers have brought the Higher Education sector into disrepute;
- 13) Where access to provider's premises, records, students, or staff has been denied to the Department or its representatives;

14) Failure to notify the Department at least three months in advance that there has been a change of location in respect of a designated course.

Depending on the nature and extent of these issues, action might include:

- Suspension of payments;
- The Department requiring specific actions being put in place by a specific date through an enforcement notice. Where a provider fails to meet these conditions, further action would be taken;
- Imposing a freeze on new recruitment at the provider;
- Requiring the provider to submit a new specific course designation application (either for full set of checks or course eligibility checks only);
- Suspending designation (of some or all of the courses at that organisation);
- Reducing student number controls for future years or applying SNCs to small providers who exceed the annual allowance;
- Withdrawal of specific course designation (either for particular courses or for all courses at that organisation).

When the Department decides it is appropriate to implement sanctions we will write to the provider setting out the reasons for our concerns and the action we propose to take. Providers will be given the opportunity to respond before the final action is taken.

In some circumstances such as suspension of payments or designation the enforcement action will be taken immediately and the process and timescales for dealing with this are set out below.

## **Suspension of Payments or Designation:**

SLC may immediately suspend payments (tuition fee loan payments to providers, and/or maintenance payments to students) if the Department or the SLC has reasonable grounds to believe that a provider is not complying with the conditions of its designation. The Department may suspend designation in respect of new students. Any decision to suspend designation or payments will be reflected on the Register of HE providers, as appropriate.

The circumstances that may be expected to lead to a suspension of payments include (but are not restricted to):

- reasonable grounds that a provider may be claiming payments, to which it is not entitled, for instance, because students are not studying a designated course, are not in attendance, or there has been systematic misrepresentation of students' eligibility.
- failure by a provider to notify HEFCE of a change of control or other material adverse change that brings under question the on-going sustainability and/or governance of the provider or other matters that could affect the student interest.

**Where payments are suspended it is the provider's responsibility to notify students. The SLC may also write to students to explain the situation and the reason for the suspension of payments.**

## Action that the Department or SLC will take following suspension of payment or designation

In the event that a decision is taken to suspend payments or designation, the Department will write to the provider within 5 working days, setting out the nature of the concerns.

The provider will be given 14 working days to comment and provide evidence. If necessary a meeting between the Department, the SLC (where appropriate), and the provider will be arranged to discuss the concerns.

Following the completion of any necessary investigations, the provider will be informed of whether further action is proposed by the Department. In the event that action is proposed, the provider will have 5 working days to comment.

### Action that the Department will take following the conclusion of investigation:

The action taken may include:

- immediate withdrawal of the provider's course designations for all students;
- withdrawal of the provider's designation in respect of new students, with the effect that the provider would be prevented from recruiting new students;
- issue of an enforcement notice specifying actions to be taken by the provider and the timescale for completing those actions.

Enforcement notices may include (but are not restricted to):

- a requirement for additional information and monitoring;
- an instruction to carry out, at the provider's expense, improvements to student or employee facilities;
- a direction to conduct an independent audit or investigation;
- a direction to publish information;
- a public instruction to improve those areas of performance deemed deficient (improvement notice); and,
- a direction to remove or suspend members of the board of governors or the Accounting Officer.

Providers should note that the Department may issue an enforcement notice in respect of any relevant matter without having first suspended payments. Failure to comply with such

an enforcement notice within the specified timescale may lead to a withdrawal of designation.

## **Reapplying for designation**

In circumstances where designation for some or all of its courses is removed, a provider would be eligible to reapply for Specific Course Designation when the issues of concern have been addressed.

Providers should note that if they fail a QAA Higher Education Review (Alternative Providers) they cannot be re-reviewed by the QAA for designation purposes within 18 months. Only if that review is successful will they be able to reapply.

## Annex A: Definitions

The document uses a number of terms to describe and distinguish between different types of higher education provider, funding and quality assurance arrangements defined as follows:

**Alternative provider** means any provider of higher education courses which is not in direct receipt of recurrent funding from HEFCE or from equivalent funding bodies in the Devolved Administrations; or does not receive direct recurrent public funding (for example, from a local authority, or the Secretary of State for Education); and is not a Further Education College.

This includes a wide range of providers which are for-profit, not-for-profit and charities.

**Franchise** is an agreement by one institution (usually an HEI) that another institution may deliver all or part of a programme approved and owned by the first institution. The franchising institution normally retains overall control of the programme's content, delivery, assessment and quality assurance arrangements. (See Annex B)

**Full-Time Course** is defined as one where students are normally required to attend the institution, or elsewhere, for periods amounting to at least 24 weeks within the year and, during that time, they are normally expected to undertake periods of study, tuition, learning in the workplace, or sandwich work-placement that does not meet the criteria to be sandwich year-out, which amount to an average of at least 21 hours per week. For courses of two years or more, full-time students are normally required to attend the institution, or elsewhere, for periods amounting to at least for a minimum of eight weeks in the final year.

**Further Education College (FEC)** is a body corporate, established or designated under the Further and Higher Education Act 1992, for the purpose of establishing and conducting an educational institution, which may provide further and higher education for those who are over compulsory school age. FECs are eligible to receive funds from the Skills Funding Agency and HEFCE in the pursuit of their educational purposes.

**HEFCE** is the Higher Education Funding Council for England, a Non-Departmental Public Body established under the Further and Higher Education Act 1992.

**Higher Education Institution (HEI)** is defined as i) a university, or ii) an institution conducted by a higher education corporation, or iii) an institution designated as eligible to receive support from funds administered by HEFCE (aside from Further Education Colleges, which are defined above). At present, all English HEIs with the exceptions of the University of Buckingham and the University of Law receive support from funds administered by HEFCE and are listed here:

<http://www.hefce.ac.uk/whatwedo/invest/unicoll/highereducationinstitutions/>

**Higher Education (HE) providers** refer to any providers of higher education courses whether provided directly as a teaching body or indirectly as an awarding body.

**HESA** is the Higher Education Statistics Agency, the official agency for the collection, analysis and dissemination of quantitative information about UK higher education. It is a private limited company funded by subscription from UK Higher Education Institutions and is not a Government body. It was established in 1993 following the Further and Higher Education Act 1992, which sets out a duty to Higher Education Institutions to give information to their respective Funding Councils across the UK (including HEFCE).

**International Financial Reporting Standards (IFRSs)** are accounting standards and interpretations published by the International Accounting Standards Board (IASB).

**Key Information Sets (KIS)** are comparable sets of information about full- or part time undergraduate courses and are designed to meet the information needs of prospective students.

**Part-time courses** must not exceed four times the period ordinarily required to complete a full-time course leading to the same qualification

**QAA** is the Quality Assurance Agency for Higher Education, whose role is to safeguard quality and standards in UK universities and colleges, so that students have the best possible learning experience. The QAA is an independent body, a registered charity and a company limited by guarantee. It is funded through subscriptions from higher education institutions and through contracts and agreements with the major UK funding councils.

**Specific Course Designation** is the process by which the Secretary of State designates courses of higher education, which are not automatically designated under the regulations for the purposes of student support.

**Student support** is financial support for higher education students' tuition and living costs and supplementary grants provided by the Government in the form of grants and loans.

**UK GAAP - Generally Accepted Accounting Practice in the UK** is the body of accounting standards and other guidance published by the UK Accounting Standards Board (ASB).

**Validation** is the process by which a degree-awarding body ('the validating organisation') judges a module or programme developed and delivered by another organisation ('the teaching organisation') and approves it as being of an appropriate standard and quality to contribute, or lead, to one of the validating organisation's awards. Students normally have a direct contractual relationship with the teaching organisation. (See Annex B)

# Annex B: Franchised and Validated Provision

## Introduction

Courses delivered by alternative providers in partnership with other providers (usually one with its own degree awarding powers) are classified by the Department as either “franchised” or “validated” provision. Any courses delivered by an alternative provider in partnership with another provider (whether in whole or part) must be specifically designated in order to attract student support even where the franchising institution is authority funded. The designation process will depend on whether the course is considered as ‘franchised’ or ‘validated’ provision and in the case of franchised courses whether the franchising institution is authority funded or an alternative provider.

This guidance clarifies the definitions of ‘franchised’ and ‘validated’ provision for the purpose of specific designation, and sets out the rules that apply to each. If you are unsure a course meets the definition please check with HEFCE in the first instance. The Department will determine the treatment in a particular set of circumstances.

## Franchised Courses

A Franchised course, for purposes relating to specific course designation and student number controls, is a course subject to an agreement by one institution (the franchising institution - usually a provider with its own degree awarding powers) that another institution may deliver all or part of a programme approved and owned by the first institution<sup>11</sup>. For the purposes of student support these courses are considered as being delivered ‘on behalf of’ the franchising institution. To qualify as franchised provision for the purpose of specific course designation, the following conditions must be met:

- a written legally binding agreement is in place between the franchising institution and the provider which sets out the conditions of the franchising agreement;
- the course is registered on the SLC HEI course database in the name of the franchising institution and the fee loan is paid to the franchising institution;
- the student is a student of the franchising institution, is included within their HESA and other data returns and, when appropriate, counts against that institution’s SNC allocation;
- the student has a contractual relationship with the franchising institution for delivering the course, and

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<sup>11</sup> In respect of awarding body qualifications i.e. HNDs, HNCs and Diplomas in Education and Training (DETs), the programme of study will be approved and owned by the awarding body e.g. Pearson/Edexcel, SQA, City and Guilds etc. who will also be responsible for the standard of the award. The franchising institution will normally retain control over all other aspects. To be treated as franchised provision for the purpose of specific course designation will require the other conditions, set out above, to be met.

- the conditions of the franchise agreement meet the expectations set out in the UK Quality Code for Higher Education (QAA) in respect of managing higher education provision with others.

We expect students on franchised courses to be able to access the complaints procedures of the franchising institution. Where a student exhausts the complaints procedures and remains dissatisfied with the final outcome, they can contact the Office of the Independent Adjudicator for Higher Education (OIA).

Where the franchising institution is subject to the fee cap under the Higher Education Act 2004 the fees for a franchised course are regulated. The franchising institution may charge the student up to the basic fee level, or up to the higher level where an approved Access Agreement is in place. As the fee for the franchised course is regulated, the franchising institution must ensure that the alternative provider does not charge the student a fee above the statutory caps.

## Franchised Provision and Designation Applications

If the course meets the definition of a 'Franchised Course' the course is considered as being delivered 'on behalf of' the franchising institution. Where the franchising institution is authority funded the Department has decided to provide blanket specific designation of franchised courses in the 2015/16 academic year. The Department is currently reviewing its policy on franchises between authority funded institutions and alternative providers and reserves the right to issue further Guidance in due course.

Where the franchising institution is an alternative provider, the franchising institution must apply for specific course designation and the application process will depend on whether the franchising institution is a new or repeat applicant.

Where a course does not meet the conditions for a franchised course set out above, for example, where the alternative provider wishes to have their own SNC allocation and the student registered with them, or there is another form of partnership arrangement between the two institutions, then, irrespective of the terminology used to describe that arrangement, the course will not be treated as a franchised course and will be subject to the full specific designation arrangements. These courses will need to meet the quality and standards expected of validated provision (the exception will be where the alternative provider holds their own degree awarding powers).

If the alternative provider runs a mixture of franchised and non-franchised courses, the alternative providers will still be subject to the full designation process in their own right in respect of the non-franchised courses and the students on these courses will, when appropriate, count against the alternative provider's SNC allocation.

## Franchised Provision and Tuition Fee Regulation

Where the franchising institution is HEFCE funded, a specifically designated franchised course is a qualifying course for the purpose of the fee cap. The course fees are regulated, within the definitions of the Higher Education Act 2004, therefore the student cannot be charged a fee for the course above the higher fee cap (currently £9000 for a full-time course and £6750 for a part-time course).

Such courses will also be subject to any limits set out in the franchising institution's Access Agreement. In these cases we expect the course to be specifically referred to in the approved Access Agreement between the franchising institution and the Office of Fair Access – both in the published agreement and in the accompanying tables that list course fees. In these cases students will be able to access a fee loan to cover the full cost of their course.

All fee income over the basic amount (currently £6000 for a full-time course and £4500 for a part-time course) received in respect of students on franchised courses must be included in the franchising institution's Access Agreement. The students on franchised courses must also be able to benefit from appropriate access measures.

Where the course does not meet the conditions of franchised provision the fees are not regulated and providers are free to determine their own fee levels. The maximum fee loan students can access will be £6000 for a full-time course and £4500 for a part-time course.

## Validated Courses

A validated course, for purposes of specific course designation and student number controls, is a course subject to arrangements under which a degree-awarding body<sup>12</sup> ('the validating organisation') judges a module or programme developed (or jointly developed with) and delivered by another organisation ('the teaching organisation') and approves it as being of an appropriate standard and quality to contribute, or lead, to one of the validating organisation's awards. Students normally have a direct contractual relationship with the teaching organisation. To qualify to be treated as validated provision for the purpose of specific course designation the following conditions must be met:

- a written legally binding agreement is in place between the validating organisation and the teaching organisation which set out the conditions of the validating agreement;
- the course is registered on the SLC HEI course database in the name of the designated teaching organisation (the alternative provider) so that the fee loan is paid direct to that provider; and,
- the student is a student of the designated teaching organisation (the alternative provider), counts against that organisation's student number control allocation where appropriate<sup>13</sup> and, where required, will appear within their HESA returns.

The conditions of the validation agreement meet the expectations set out in the UK Quality Code for Higher Education (QAA) in respect of managing higher education provision with others.

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<sup>12</sup> In respect of awarding body qualifications i.e. HNDs, HNCs and DETs the validating organisation will be the awarding body e.g. Pearson/Edexcel, SQA or City and Guilds etc. To be treated as validated provision for the purpose of specific course designation will require the other conditions, set out above, to be met

<sup>13</sup> Students on validated courses will count in respect of whether a teaching organisation can be classified a 'small provider' for purposes relating to course designation and student number controls

# Annex C: Addressing less than successful review judgment from QAA Higher Education Reviews (Alternative Providers) and QAA annual monitoring

These arrangements apply to alternative providers that already have courses specifically designated for student support and have had a successful initial QAA review, but who receive one or more judgments which are less than satisfactory during a subsequent review, or concerns are raised following an annual monitoring visit including not making sufficient progress against an action plan.

## Appeals against QAA Higher Education Review Judgements

If a provider receives a QAA judgement of less than 'meets expectations' (i.e. 'requires improvement to meet UK expectations', or 'does not meet UK expectations') in any of the judgement areas, it will be given an opportunity to appeal, using QAA's Consolidated Appeals Procedure before the judgement and review report is published.

If the provider chooses not to appeal or appeals unsuccessfully, then the report will be published, and the QAA process for follow-up action will commence.

## The process once a QAA judgement of less than 'meets UK expectations' is confirmed

This process is initiated at the point of a published QAA review judgement of anything less than 'meets UK expectations'.

If a provider receives such a review judgement, they will have an opportunity to seek a further review in order to overturn that judgement and will need to meet the costs of further review. If the provider chooses not to seek a further review, then they indicate their intention to withdraw from the designation process.

The Department reserves the right to invoke any or all of the sanctions listed in the designation enforcement section of this guidance depending up on the seriousness of the concern raised by the QAA. Namely the possibility of:

- immediate withdrawal of the provider's course designations for all students;
- withdrawal of the provider's designations in respect of new students;
- issue of an enforcement notice specifying actions to be taken by the provider and the timescale for completing those actions;
- failure to comply with an enforcement notice within the specified timescale may lead to a withdrawal of designation; and,
- sanctions will be reflected on the HEFCE Register of HE Providers where appropriate.

## Judgements of 'requires improvement to meet UK expectations'

A provider receiving a published QAA review judgement of 'requires improvement to meet UK expectations' must supply an action plan to the QAA within 30 days of publication of the review report.

The provider will need to undergo a follow-up review **within six months of publication of the report**. If the provider either fails to submit an action plan within the 30 days, or fails to commit to a follow-up review, this would indicate their intention to withdraw from the designation process.

The provider will be expected to have made substantial progress with implementing the action plan at the time of the follow-up review and should have addressed the concerns that led to the unsatisfactory judgements. The requirement for a follow-up review within six months is in the interests of maintaining a high quality experience for all students.

Alongside this the Department reserves the right, at any point, to take actions as set out in Section 8 which may include blocking further recruitment to the course until it is shown to meet expectations.

Where the enforcement proceedings lead to withdrawal of the provider's course designation, the Department would expect the provider and its validating institution(s) or awarding body to make provision for existing students to complete their studies with another approved provider.

Once a provider has failed a QAA follow-up review for the purposes of specific course designation, they cannot be reviewed again by the QAA for those purposes within 18 months.

## 'Does not meet UK expectations' judgements

A provider receiving a published 'does not meet UK expectations' QAA review judgement must supply an action plan to the QAA within 30 days of publication of the review report. The provider will need to undergo a follow-up review within at least 6-9 months of publication of the report because these judgements are only reached where QAA review teams have very serious concerns about the quality of provision. These serious concerns need urgent attention and early

resolution in the best interests of the students. The Department will take action as set out in Chapter 8, including blocking further recruitment to the course until the provider demonstrates the course meets the required standards.

The provider will be expected to have made substantial progress with implementing the action plan and by the time of the follow-up review should have addressed the concerns that led to the failing judgements.

# Annex D: Changes of Ownership and Control

The rationale for the requirement and an explanation of what will constitute a change of ownership or control and the process and timescales for application is set out below.

Legally, there is no right to automatic transfer of designation to a new owner. Therefore where a change of ownership or control is under consideration, for students to be able to continue to access student support, the prospective new owner(s) or those in future control of the provider must notify the Department and HEFCE and reapply for specific course designation within the timescale specified by the Department and meet the designation criteria in their own right.

A new designation assessment is necessary to ensure the new owners meet the Financial Sustainability, Management and Governance, and quality of provision criteria introduced from 2013/14 to safeguard the service and educational outcomes for students. The assessment may take account of the financial, management and governance arrangements of any subsidiary, parent company or linked organisations.

## What constitutes change of control

Change of control, ownership or significant beneficial interest will trigger the need to re-apply for designation. This could be from a change in owners, directors or senior managers and would arise where this results in new set of individuals in control of the provider.

For the purposes of specific course designation a change in control refers to a change of 50% of individuals, shareholders or companies in control of the organisation. For example, 50% or more change in the shareholding or the beneficial interest. To put it another way, a situation where one party acquires the power to ensure that the affairs of the business are conducted in accordance with its wishes

Beneficial interest refers to the right of individuals or companies to receive benefits on assets held by the provider. A change in beneficial interest may arise, for example, where there is a change in the recipients of the provider's profits (e.g. as a dividend or by other means).

The same principle of a 50% change in control applies to other business models. For example, for a company limited by guarantee, a change of control arises where there is change of 50% of members; for a charity, 50% of trustees; for a partnership, 50% of partners.

Any change of ownership or control that meets the above criteria must be notified immediately the change of 50% has been reached any time after the provider's courses were originally designated. For example if a company had five shareholders, each with

20% shareholdings at the time of designation and two shareholders sold their shares, there would not be a change of ownership or control until a third shareholder sold their shares, i.e. 60% of shares have now changed hands.

Prospective owners who are planning to acquire or merge with a designated provider but wish to avoid a period of non-designation can apply in advance of the merger or acquisition to reduce the possibility of entering a period of non-designation.

## Timescale and process for applying for designation

New students at any provider where a change of ownership or control occurs would not be able to access student support until the Department has approved the specific course designation application. Students who are in receipt of student support when the change of ownership takes place will be able to continue to access student support for the duration of their course<sup>14</sup>. The Department will not deem the change in ownership or control to be completed for course designation purposes until the prospective owners have met the conditions of specific course designation. It is recommended that prospective owners are made aware of this caveat before the completion of change in ownership or control.

Providers must notify HEFCE immediately of an imminent change in ownership or control and before any change in acquisition. This will trigger the review of the prospective owner or of those in control of the provider for specific course designation. Prospective owners will have 3 months from the date of notification to submit the specified information for the specific course designation assessment. The Department will undertake to provide a decision within 3 months of receiving the full information. Providers should be mindful that the overall timescale following notification may therefore be up to six months, although in practice the typical timescale would be 6 weeks from the receipt of full information.

Whilst the prospective owner or new individual with control over the provider is being reviewed, existing students will continue to be able to access student support under the existing specific course designations. New students will however be unable to access student support until the prospective owners have been reviewed and designations approved for each course. We expect the change in ownership or control to be a sequential process with ownership or control changing once the new provider has been reviewed and approved by the Department.

Once a provider has courses designated following a change in ownership/control, the Department reserves the right to time limit the designation.

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<sup>14</sup> It is the Department's firm expectation that existing eligible students who are already in receipt of student support at the point of change of ownership will be able to continue doing so until they complete the course - however we reserve our right to revoke designation in respect of existing students in exceptional circumstances for example where there is serious misconduct by a provider

## Providers at risk of going into administration

The exception to these arrangements would be where a provider is failing financially and a change in ownership may be needed to avoid the provider going into administration or to enable a provider in administration to be bought and continue trading. In such cases the Department will consider the change in control arrangements as a matter of priority to avoid hardship to students.

The Provider will need to demonstrate that the provider is failing financially and that extraordinary treatment is necessary. An example of this could be filing for administration or appointing a liquidator.

In practice this is likely to mean that existing designations held by the failing provider are assigned temporarily to the new provider. Once the Department is assured that the new provider satisfies the quality, academic performance and Financial Sustainability Management and Governance criteria are met the Specific Course Designation will be approved in respect of the new provider.



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