



Department  
for Education

# **Higher Education and Research Act: detailed impact assessments**

**December 2017**

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# Introduction

1. On 27<sup>th</sup> April 2017 the Higher Education and Research Act (HERA) achieved Royal Assent<sup>1</sup>. The reforms it sets out will help ensure that everyone with the potential to succeed in higher education, irrespective of their background, will be able to choose from a wide range of high-quality providers, access relevant information to help them make the right choices, and benefit from excellent teaching that helps them succeed in the labour market.
2. By introducing more competition and choice into higher education through this Act, we will deliver better value for students, employers and the taxpayers who underwrite the system. It will also strengthen our world class capabilities in research and innovation and, by supporting a strong graduate premium, boost productivity across the whole of the UK.
3. This document measures the cost and benefits of reforms set out in HERA (2017). It updates and revises analysis published in June 2016 alongside the Higher Education and Research Bill (HERB)<sup>2</sup> to reflect the changes that have been introduced during the Parliamentary process. As such, the impact assessments contained in this document replace the corresponding ones published with the introduction of HERB.
4. The reader should note that this IA reflects the Government plans and economic assumptions at the point that HERA received Royal Assent in April 2017. The Government, with the OfS, will subsequently develop the detail of how these powers are used, for example through further consultation on the detail of the regulatory framework that will govern the HE sector. Where appropriate, further Impact Assessments will be published.

## Changes to the impact assessments

5. These Enactment Impact Assessments contain several changes compared to those published with HERB in June 2016. These are as follows:
  - The figures in our analysis have been adjusted to 2017 prices<sup>3</sup>, because HERA achieved Royal Assent in April 2017.
  - The analysis accompanying HERB assumed that the regulatory framework for the Office for Students (OfS) came into force in academic year 2018/19, we

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<sup>1</sup> <https://services.parliament.uk/bills/2016-17/highereducationandresearch.html>.

<sup>2</sup> <https://www.gov.uk/government/publications/higher-education-and-research-bill-impact-assessment>.

<sup>3</sup> We use the ONS' GDP deflators at market prices, and money GDP: March 2017 (Spring Budget 2017). See <https://www.gov.uk/government/statistics/gdp-deflators-at-market-prices-and-money-gdp-march-2017-spring-budget-2017>.

now know it will be academic year 2019/20. Therefore, we have shifted our appraisal period one year backwards where necessary.

- The higher education provider forecasts (see Annex A), which underpin our analysis, have been revised. We have:
  - updated the baseline provider numbers using the most recent data.
  - changed the starting year of the provider forecasts from 2018/19 to 2019/20 because we now know that the OfS’s regulatory framework comes into force in 2019/20.
  - made some adjustments to the underlying assumptions of our model to reflect latest policy thinking on provider numbers, which we discuss in more detail in Annex A.
- There were several significant amendments to HERA during the passage of HERB through parliament; our analysis has been revised to update these changes where necessary. These are explained in more detail below.
- The assessment of the whole economy benefits of the “Entry into the higher education sector and single entry gateway” impact assessment has been revised so that it takes account of higher tuition fees being a transfer payment from students. This change does not affect the deregulatory status to providers of this reform, only the whole economy estimate.
- In July 2016, after the analysis at the Bill stage was published, there was a machinery of government change. Higher Education was moved from the Department of Business Innovation and Skills (BIS) to the Department for Education (DfE). As such, references to BIS have been changed to DfE.

## List of Bill Amendments

6. The Government engaged widely with the higher education, research, and innovation communities, and listened to views expressed in both Houses of Parliament. The main amendments to HERA<sup>4</sup>, and their impact (if any) to our analysis are outlined below:

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<sup>4</sup> HERA had a large number of amendments, many were minor or technical, the list below outlines the main amendments.

## **Institutional autonomy**

7. This amendment places an explicit duty on the OfS in performing its functions, and the Secretary of State in issuing guidance and directions and determining terms and conditions of grants, to have regard to the need to protect the institutional autonomy of English higher education providers.
8. This amendment governs the behaviour of the OfS and SoS in legislation, but does not impose any additional regulatory burdens on HE providers, students or taxpayers. Therefore, further analysis is not required.

## **Expert advice when granting, varying or revoking Degree Awarding Powers (DAPs)**

9. This amendment ensures that the OfS will have to seek expert advice ahead of awarding, varying or, based on quality concerns, revoking DAPs. This advice should come from the Designated Quality Body (DQB) or, if no body is designated, from a committee of the OfS.
10. In the current system, the Quality Assurance Agency (QAA) already undertake a detailed assessment and provide expert advice ahead of awarding DAPs. Our original analysis assumed a similar process would still be in place, therefore, this amendment requires no additional analysis.

## **Grant of Authorisation: notification of new providers**

11. This amendment requires the OfS to notify the Secretary of State as soon as possible after it grants DAPs to a provider that has not previously operated under a validation arrangement.
12. This amendment has a negligible impact on the OfS because the burden of sending a notification is minimal, therefore, additional analysis has not been performed.

## **Degree Awarding Powers (DAPs) and University Title (UT) – revocation**

13. This amendment enshrines on the face of the Bill the specific conditions that would need to be met before the OfS can revoke a provider's DAPs or UT.
14. The revocation of DAPs and UT is beyond the scope of our analysis because it deals with non-compliance. Furthermore, this amendment did not change the policy intent, it merely enshrined it in legislation.

## **Appeals against variation or revocation of DAPs and UT**

15. This amendment clarifies in legislation the grounds higher education providers have for appeal against the revocation of their DAPs and UT.
16. This amendment is beyond the scope of our analysis because it deals with non-compliance.

## **New statutory guidance for OfS with factors to consider when granting University Title**

17. This amendment requires the OfS to consider the factors in guidance given by the Secretary of State before approving the use of “university” in a provider’s name.
18. The policy intention was always that the OfS considers the factors set out in Secretary of State guidance as described in the amendment when granting UT. Therefore, this amendment requires no further analysis because it imposes no additional burden.

## **Saving for right to grant degrees under the Ecclesiastical Licences the Ecclesiastical Licences Act 1533**

19. This protects the right of the Archbishop of Canterbury, or any other person, by virtue of the Ecclesiastical Licences Act 1533 to grant a degree where the recipient is not required— (a) to complete an appropriate course of study or an appropriate programme of supervised research, or (b) to satisfy an appropriate examination, test or other assessment. This amendment requires no additional analysis.

## **Collaboration**

20. This amendment which, as part of the OfS’s general duty to have regard to the need to encourage competition when carrying out its functions. It also requires the OfS to have regard to the benefits for students and employers resulting from collaboration between higher education providers.
21. This amendment governs how the OfS carries out its functions in legislation, but does not impose any additional regulatory burdens on HE providers, students or taxpayers. Therefore, further analysis is not required.

## **Freedom of speech**

22. This amendment requires all registered providers, regardless of where on the OfS register they sit, to be subject to the freedom of speech duty as set out in the Education (No 2) Act 1986.
23. The amendment requires a new impact assessment, which can be found on page 185.

## **Accelerated courses**

24. This amendment enables the Secretary of State to set an annual fee limit in respect of an accelerated course that is higher than the fee cap for the standard equivalent version of that course.
25. This is an enabling amendment that only allows fee regulations to be changed through secondary legislation. An accompanying impact assessment will be published alongside a separate consultation.

## **Diversity of choice**

26. This amendment clarifies that the OfS's duty to have regard to greater student choice includes – but is not limited to - choice amongst a diverse range of types of provider, higher education courses, and means by which they are provided (for example, full-time or part-time study, distance learning or accelerated courses).
27. This amendment governs how the OfS carries out its functions in legislation, but does not impose any additional regulatory burdens on HE providers, students or taxpayers. Therefore, further analysis is not required.

## **Student transfer functions**

28. This amendment places a duty on the OfS to monitor and report on the provision of arrangements for student transfers and their take-up; and which confers a power on the OfS to facilitate, encourage, or promote awareness of, arrangements for student transfer.
29. The amendment requires a new impact assessment, which can be found on page 211.

## **Transparency duty**

30. This amendment requires providers to publish information on levels of attainment, in addition to application, offer, acceptance and completion rates, broken down by gender, ethnicity and socio-economic background. This will enable a fuller picture of the whole student lifecycle.

31. We have made minor changes to the “Information Sharing and Data Transparency” impact assessment to reflect this amendment. Requiring providers to publish information on levels of attainment should impose no additional burden on the providers in scope of the transparency duty because they should already be collecting this data as a part of their wider responsibilities.

### **Electoral registration**

32. This amendment would allow the OfS to impose a registration condition on HE providers requiring them to take specified steps to co-operate with electoral registration officers (EROs) in England for the purpose of enabling the electoral registration of students. This should increase the awareness of provider’s current legal duty and should encourage HE providers to work with EROs to actively promote electoral registration among their students at relevant times.
33. At the point of enactment, it is unclear what steps the OfS will take to require providers to meet their current legal duty; we therefore have not included any additional analysis at this stage. Further analysis will be performed for the upcoming consultation on the new regulatory framework.

### **Information for International Students**

34. This amendment means that, when considering what information is appropriate to publish, the designated data body (DDB) or (if no body is designated) the OfS must consider what information would be useful for international students, prospective international students and Higher Education providers who recruit or are thinking of recruiting international students.
35. The Higher Education and Research Council for England (HEFCE)<sup>5</sup> and the Higher Education Statistics Authority (HESA)<sup>6</sup> already collect and publish data about international students. We therefore do not believe this amendment would cause any additional burden, because it does not result in a change from the status quo. As such, we do not perform any additional analysis.

### **Duty to monitor and report of financial sustainability**

36. This amendment places a duty in the OfS to monitor the financial sustainability of registered HE providers. It must include in its annual report a summary on financial sustainability identifying any relevant patterns, trends or other matters.
37. The Higher Education and Research Council for England (HEFCE) already publishes an annual financial health report for the higher education sector<sup>7</sup>. The

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<sup>5</sup> <http://www.hefce.ac.uk/analysis/HEinEngland/postgrad/noneu/>.

<sup>6</sup> <https://www.hesa.ac.uk/data-and-analysis/students/international-study>.

<sup>7</sup> <http://www.hefce.ac.uk/pubs/year/2016/201634/>.



cost of producing this report is included in HEFCE's operating costs, which are used to estimate the OfS' operating cost. Therefore, the impact of this duty has already been quantified in the "Introducing registration fees for Office for Students" impact assessment.

### **Duty to compile and make available higher education information.**

38. This amendment sets out a requirement that the DDB or (if no body is designated) the OfS compiles and makes available to the OfS, UKRI and Secretary of State appropriate information relating to higher education provision in an appropriate form and manner. When considering what is appropriate, the DDB or OfS is required to consider what would be helpful to the OfS, UKRI and the Secretary of State.
39. This amendment governs the behaviour of the DDB. HESA, the current DDB, already makes appropriate information available to HEFCE, the Secretary of State and research councils. It also engages widely with stakeholders to deliver better output, for example, it is currently running a data futures project. Therefore, this amendment should not impose any additional burden compared with the status quo, so further analysis is not required.

## **Teaching Excellence and Student Outcomes Framework**

40. Following the publication of the White Paper, *Success a Knowledge Economy* in May 2016, there have been a series of developments and announcements which have meant changes to the way in which the Teaching Excellence and Student Outcomes Framework (TEF) will work.
41. Firstly, Parliamentary amendments to the Bill and feedback from the HE sector on the UK Government's Technical Consultation on TEF Year 2, has led to further refinements of the original proposals, as detailed in Table 1 below.
42. These changes will be reflected in an updated impact assessment covering the Government's and the OfS's detailed proposals for how the future Higher Education Regulatory Framework will work.

**Table 1: Key policy amendments**

	<b>Original proposals</b>	<b>Revised proposals</b>
<b>Differentiated fee uplift</b>	Impacts fees in academic year 2019/20) based on assessments taking place in academic year 2017/18.	Impacts fees in academic year 2020/21) <sup>8</sup> based on assessments taking place in academic year 2018/19.)
<b>Subject level assessment</b>	First assessments in academic year 2018/19.	First assessments in academic year 2019/20) <sup>9</sup>
<b>Award ratings categories</b>	3 award ratings (with a possible move to 4 from TEF Year 4 onwards) named <i>Meets Expectations, Excellent and Outstanding</i>	3 award ratings only and renamed <i>Bronze, Silver and Gold</i>

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<sup>8</sup> This means that in Years 2 and 3 all providers applying to TEF will be able to raise their tuition fee levels by the full inflation rate, regardless of the level of TEF award they receive.

<sup>9</sup> This means that pilots of the subject level assessment will run for two years rather than one

## Definitions and acronyms

The following impact assessments use a number of terms to describe and distinguish between different types of Higher Education Provider and funding, these are defined as:

**Alternative provider** means any provider of higher education courses which is not in direct receipt of recurrent funding from HEFCE; 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.

**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).

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

**Publicly-funded providers** refer to any provider of higher education courses which receives funds from HEFCE.

**Student support** is financial support for higher education students' tuition and living costs provided by the Government in the form of grants and loans under the Teaching and Higher Education Act 1998.

<b>Title:</b> Entry into the higher education sector and single entry gateway  <b>IA No:</b> DFE008(F)-HE  <b>RPC Reference No:</b> RPC-3344(1)-DFE  <b>Lead department or agency:</b> Department for Education  <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>			
	<b>Date:</b> 11/12/17			
	<b>Stage:</b> Enactment Stage			
	<b>Source of intervention:</b> Domestic			
	<b>Type of measure:</b> Primary legislation			
<b>Summary: Intervention and Options</b>			<b>RPC Opinion: GREEN</b>	

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out	Business Impact Target Status
£12.3m	£170.5m	-£17.2		

**What is the problem under consideration? Why is government intervention necessary?**

Currently, there are different regulatory systems for well-established HEFCE-funded Higher Education Institutions, and Alternative Providers (APs) of higher education. The process of entry into the sector is costly and burdensome, due to the barriers to entry for new entrants, including the need for validation agreements, granted by incumbent providers. There is an opportunity to move to a more streamlined, less burdensome regulatory framework that supports greater choice and competition, whilst protecting the student and the taxpayer interests and supporting the sector's reputation and growth.

**What are the policy objectives and the intended effects?**

The policy aims to address existing regulatory failures in the sector by creating a system where:

1. All HE providers can compete on a level playing field
2. Unnecessary bureaucracy is removed, primarily by cutting out duplicatory processes and through lighter-touch monitoring for the majority of providers
3. Barriers to entry into the sector are reduced/removed

As a result, students will benefit from improved value for money and greater choice and innovation in the sector. This should support long-term productivity growth.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Validation:  
Non-regulatory reforms chosen

Designation:  
Option 0: "Do nothing" – existing separate process for AP designation.  
Option 1 – creation of a single entry gateway, with a consistent, light-touch regulatory system

Degree-Awarding Powers (DAPs)  
Option 0: "Do nothing" – DAPs awarded subject to QAA review, minimum four-year track record.  
Option 1 – granting Probationary DAPs in parallel with entry at "Approved" levels.

University Title  
Option 0: "Do nothing" – separate application for UT.  
Option 1 – University Title granted in parallel with full DAPs

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 07/2023				
Does implementation go beyond minimum EU requirements?			N/A	
Are any of these organisations in scope?	<b>Micro</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)		<b>Traded:</b> N/A <b>Non-traded:</b> N/A		

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister:



Date: 11/12/17

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Entry into the higher education sector and single entry gateway

## FULL ECONOMIC ASSESSMENT

Price Base Year 2017	PV Base Year 2018	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 9.2	High: 15.4	Best Estimate: 12.3

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
	Low	1.6		33.2
High	2.6		55.3	457.9
Best Estimate	2.1		44.2	366.3

### Description and scale of key monetised costs by 'main affected groups'

The measures here are aimed at reducing regulatory barriers. The two monetised costs are:

- (1) The additional cost of complying with access agreement conditions for "Approved (fee cap)" providers
- (2) The additional cost of Office for Independent Adjudicator (OIA) subscriptions for "Registered" providers

The two costs are a result of voluntary choices by HE providers, the benefits are assumed to at least outweigh the costs.

### Other key non-monetised costs by 'main affected groups'

Costs of familiarisation with the new system – this will depend on the OfS' decisions in 2019/20.

Increased student choice, facilitated by a level playing field for providers will inevitably benefit certain providers (including existing and new APs) at the cost of others (most likely existing HEIs). This reform, in concert with other changes the Government is making, should support the sector increasing student numbers, particularly due to demographic changes, and among international students and those from underrepresented groups.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
	Low	0		34.4
High	0		57.4	473.4
Best Estimate	0		45.9	378.7

### Description and scale of key monetised benefits by 'main affected groups'

Ongoing cost savings for providers in the sector:

1. Removal of annual re-designation of AP courses – from £0.6m to £1.3m annually
2. Creation of "Approved (fee cap)" – from £12.3m to £29.6m annually
3. Removed duplication between designation and Tier 4 visa sponsorship - £0.8m to £1.5m annually

Benefit to students:

Greater number of providers signing Access Agreements to provide support to students from underrepresented/ disadvantaged groups – £8.1m in 2019/20, rising to £19.4m in 2027/28

### Other key non-monetised benefits by 'main affected groups'

A harmonised regulatory framework, reduced barriers to entry and growth in the sector, resulting in better value, quality and choice for students, and innovation in the HE sector.

### Key assumptions/sensitivities/risks

Discount rate

3.5

Behaviour of providers in the new system is very uncertain, including:

1. The rate of entry of new providers,
2. The rate of closure,
3. Providers' choice of operating models.

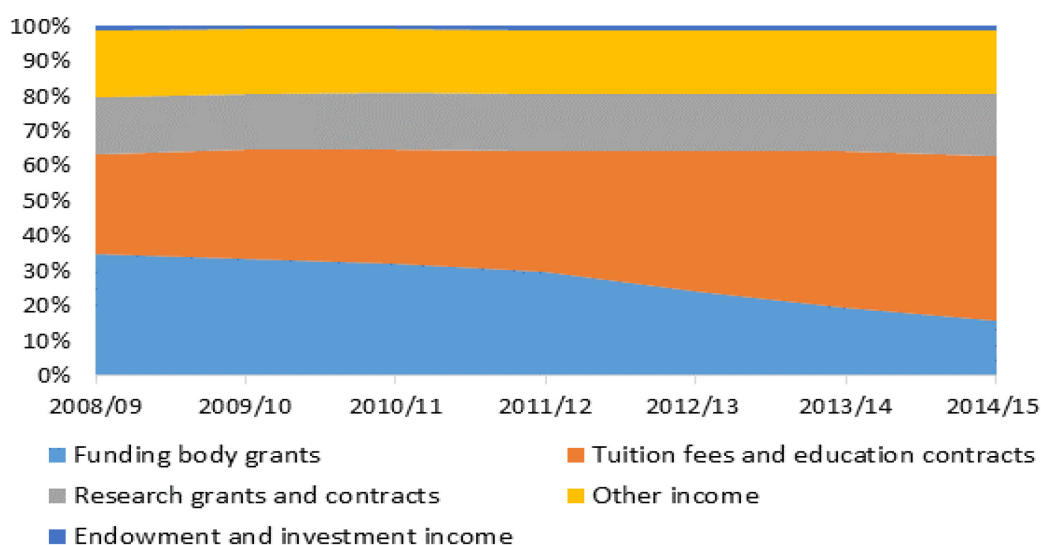
## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m: -86.0
Costs: 10.8	Benefits: 27.9	Net: 17.2	

## Problem under consideration

1. The higher education sector in England currently has a wide variety of providers. 132 Higher Education Institutions (HEIs) get teaching grant funding from the Higher Education Funding Council for England (HEFCE) as do some Further Education Colleges (which also receive funding from the Education and Skills Funding Agency). Consequently, the academic standards, financial governance and other performance and delivery aspects of these providers are robustly regulated and monitored. However, as set out in Figure 1, these levels of grant funding are decreasing as a proportion of Universities' income. As a result, attaching conditions to grant funding is becoming less and less effective. To counteract this, Government has proposed creating the Office for Students<sup>10</sup>, a new regulator with clear legislative powers to regulate the sector and encourage greater choice and competition, with students' interests at its heart.

**Figure 1. Sources of income for UK HEIs, percentage split**



Source: HESA finance data

2. APs of higher education do not currently receive grant funding from HEFCE, however, their students may be eligible for undergraduate student loans and they may have powers to award their own degrees, so they are also subject to a system of checks and monitoring. This system of regulation, however, is quite different for APs; in many ways it is significantly more burdensome, for example they must go through an annual process of re-designation (discussed in more depth in the following section). This makes it difficult for new providers to enter the sector and compete with incumbent, publically funded providers.

<sup>10</sup> Please refer to the business case for the establishment of Office for Students, published alongside this.

**Table 1. Number of existing HE providers, based on most recent data<sup>11</sup> for each category**

<b>Category</b>	<b>Number of HE providers</b>
<b>APs</b>	<b>690</b>
Not in the system	573
Have access to student loans	115
Degree Awarding Powers (DAPs)	9 <sup>12</sup>
<b>Higher Education Institutions</b>	<b>132</b>
<b>Further Education Colleges</b>	<b>241</b>
Without access agreements	150
With access agreements <sup>13</sup>	91
<b>TOTAL HE providers</b>	<b>1063</b>

3. Thus there are two different regulatory systems for well-established HEIs and newer APs. This means that new providers find it difficult to enter the sector and those that enter may face greater regulatory barriers compared to well-established providers. There has been a continued push to put all providers on a level footing in the HE system and align the regulatory systems as much as possible as way to promote innovation and improve choice for students. The 2011 Higher Education White Paper, “Students at the Heart of the System” announced measures to ensure all providers face the same burden, making it easier to secure Degree-Awarding Powers and University Title. However, only limited advances could be made in this area without legislative reforms.
4. There is currently very limited information about many of the APs that are not designated for student support, as they do not formally engage with government agencies (apart from those who have secured Tier 4 trusted sponsor status). Our latest research suggests that there were 690 APs (including those with designated courses) in England in 2014<sup>14</sup>.

<sup>11</sup> BIS (2016) “*Understanding the market of alternative providers of higher education and their students in 2014*” (English only APs), HEFCE HE provider register and OFFA records. Numbers correct as of April 2017.

<sup>12</sup> 7 of these APs also have access to student loans, and are therefore also counted in the 115 APs above.

<sup>13</sup> Only providers with access agreements with Office for Fair Access are allowed to charge more than £6,000 (and up to £9,000) for undergraduate degrees

<sup>14</sup> BIS (2016) “*Understanding the market of alternative providers of higher education and their students in 2014*”

## Entry into the sector for a new provider

### Course validation

5. For a provider that wants to start offering recognised HE degrees, the first step is obtaining course validation. This first hurdle is currently based on a process whereby an existing provider with a power to award HE degrees has to quality assure the course of the market entrant. Course validation verifies that the course offered is genuinely meeting the standard of higher education. The courses are then also reviewed by the Quality Assurance Agency (QAA) as a part of their review of the validating institution.
6. While this process reduces the role of regulation in the process (by relying on the assurance offered by the existing provider) and has reputational advantages (the new provider can rely on the incumbent institution's reputation), there are several drawbacks. First, incumbent institutions do not have strong incentives to actively encourage entry of new providers as they are in effect creating competition for themselves. This means it is possible for high quality APs to be locked out of providing degrees if they cannot find a validating body willing to work with them. Secondly, it also leads to incumbent providers charging high fees for validation, which can usually amount to 10% of each student's course fees<sup>15</sup>.
7. In addition, the administrative requirements can also act as a disincentive for institutions to play an active role in validation. The Competition and Market Authority, in their review of HE sector<sup>16</sup>, pointed this out as one of the key issues with validation arrangements, "increasing regulatory scrutiny of institutional performance and oversight arrangements making validation increasingly risky". It has been noted that validation agreements are highly variable, with some validating HE providers taking a more hands off approach than others.

### Specific Course Designation

8. The majority of undergraduate students in England are supported by the government through the system of tuition fee and maintenance loans. For APs, the government has to make sure that they are supporting students at institutions that offer high quality provision and are financially stable. Because of this, providers have to undergo thorough checks before they can offer student loans for students at their courses. The two key parts of this are:
  - a. Financial Sustainability, Management and Governance (FSMG) checks, conducted by HEFCE. APs are required to provide their audited financial accounts, as well as evidence of meeting the standard requirements on governance arrangements

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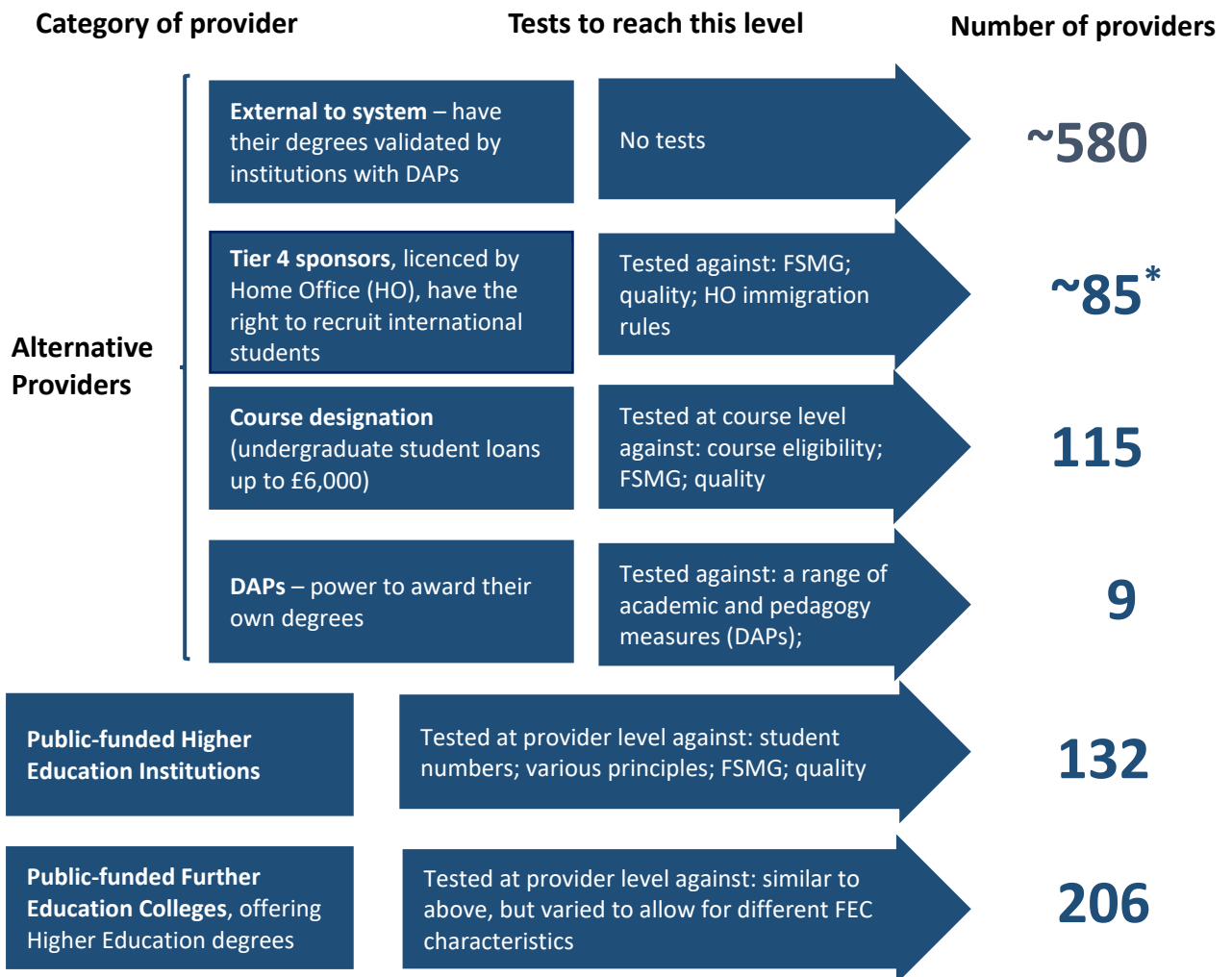
<sup>15</sup> BIS survey of alternative providers with designated courses

<sup>16</sup> CMA (2015) "An effective regulatory framework for higher education"



- b. Undergoing QAA Higher Education Review – a review of the provider’s arrangements for maintaining academic standards and quality of the courses it offers.

**Figure 2. Categories of HE providers in existing system**



\* Majority of the 115 APs with Tier 4 licenses are also designated for student support

9. After achieving designation for a particular course, APs are then subject to annual re-designation, where they need to provide the evidence of their continued financial sustainability, student numbers and quality of course provision. This entails a significant administrative burden going through the process (e.g. collecting evidence). Many APs have also noted that this process heavily affects their financial planning and recruitment of students. APs only find out that they will have student support for the next academic year in the preceding March or, in more recent years, February, at the time when the vast majority of students have already applied and received offers. This places APs at a disadvantage, as they:
  - a. Cannot plan ahead with any degree of certainty, which holds back investment.

- b. Cannot advertise their courses as eligible to receive student support until much later in the year compared to traditional higher education providers, making it harder to recruit students – many of whom will be depending on being able to access loan and other financial support.
  - c. Face a monetary and time cost of application.
10. If a provider is already offering designated courses, but wants to extend student support to other courses or change any conditions of already designated courses, they have to make a separate application. This is a more light-touch application, only checking course eligibility; however, it is still a source of uncertainty for the providers.

### **Designation for HEFCE funding**

11. APs currently have an option to become designated for public funding, however, the conditions are quite stringent and applications are very rare in practice. In addition to the standard criteria for course designation, the providers are required to prove that they bring new or highly distinctive provision into the HE sector or have an established reputation in the sector. They also need to demonstrate strong demand from students and a strong employment record of the students.

### **International Student Recruitment**

12. In order to recruit students from overseas, a HE provider needs to act as a sponsor for their Tier 4 student visa. In order to be able to sponsor students, APs undergo a separate set of checks on quality and FSMG, as well as a range of migration checks from the Home Office. If a provider is designated for student support, they have to undergo similar checks of quality and FSMG twice for different purposes.

### **Degree-Awarding Powers**

13. There are three types of Degree Awarding Powers (DAPs) – Foundation, Taught and Research. Under the current process providers must meet a four-year track record requirement before being eligible to apply for DAPs. In order to obtain DAPs, they are then scrutinised against a set of quality-linked criteria. APs are granted TDAPs on a 6 yearly renewable basis (publicly-funded providers are granted indefinite TDAPs). Because DAPs are granted for such a long period, and across all subjects, scrutiny is necessarily wide ranging.

### **University Title**

14. Under the current process, an organisation holding taught DAPs may obtain university title subject to meeting further criteria on good governance and student numbers. Those not meeting the student number criterion could apply to be a University College. This has significant reputational advantages for the HE provider.

## Rational for intervention

### Regulatory barriers to competition

15. The previous section outlined the comprehensive system of regulatory checks that currently exists to enable a provider to enter the HE sector. These protect the reputation of the sector and the degrees awarded and offer a form of consumer protection for the students. However, these have become outdated and there is a need to move to a new framework that ensures openness and competition in the sector, minimises barriers to entry and ensures the burden of checks is proportionate to the risk presented to student or taxpayers interests.
16. The CMA's<sup>17</sup> report on Higher Education Regulation has highlighted that "sector-wide regulations could create barriers to entry and exit, potentially protecting incumbent providers from competitive pressures and reducing the number of courses available to students". It emphasised that "student choice and competition ... is likely to work best where the playing field, in terms of regulation, funding and information provision, is as level as possible".
17. Four particular concerns relating to the existing system can be identified:

### Barriers to entry

18. New APs seeking to enter the higher education sector may face significant barriers to entry. A key source of these barriers is the fact that under the current system incumbent institutions play a pivotal role in the course validation process which is the first step new providers must go through before they can start offering recognised higher education degrees.
19. In the course validation process, an existing provider with a power to award HE degrees has to quality assure the course of the new provider. Since the incumbent is essentially vetting a new competitor, it has a disincentive to grant validation agreements. This also acts as a barrier to innovation in the sector. Those that do, normally charge quite high fees for validation, which puts validated APs under financial pressure and prevents them from investing more in improving their offer.

### Cumulative burdens of securing additional powers and funding

20. Providers must go through a number of additional steps in order to enter the sector, become eligible for government funding and gain the power to award their own degrees. These can be onerous and time-consuming, with the cumulative burden involved putting some providers, in particular APs, off going through these

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<sup>17</sup> Competition and Market Authority (2015) *"An effective regulatory framework for higher education"*.

processes putting them at a disadvantage compared to incumbent competitors in terms of their ability to attract students.

### **Specific Course Designation**

21. After achieving designation for a particular course, APs are then subject to annual re-designation, where they need to provide the evidence of their continued financial sustainability, student numbers and quality of course provision. This entails a significant administrative burden and means that designated providers cannot advertise financial support for their courses at the point when many students are looking to make decisions. In the consultation responses to the HE Green Paper, many APs confirmed that this process heavily affects their financial planning and recruitment of students. On the other hand, HEIs do not have to face the same uncertainty. Again, this puts the APs at a disadvantage and does not allow them to genuinely compete for students.

### **Degree-Awarding Powers**

22. Under the current process APs must meet a four-year track record requirement before being eligible to apply for DAPs, at which point they then must go through a lengthy and burdensome process of applying. This means that they have to offer validated degrees for longer than needed. They also have to submit evidence on quality and FSMG again, having already submitted it for Tier 4 visa (where applicable) and course designation purposes.

### **University Title**

23. Currently, an organisation holding taught DAPs may obtain university title subject to meeting further criteria on good governance and student numbers. University title has significant reputational benefits for the provider; however, this is a costly and lengthy process.

### **Separate regulatory systems for different types of providers**

24. The regulatory burdens outlined above apply to APs of higher education. Publicly-funded HEIs and FECs are subject to comparatively more light-touch regulation.
25. As a result, because different providers are operating to different rules, this distorts competition by giving some types of providers an advantage over others in terms of their ability to attract students or offer better or more innovative courses which other institutions are unable to offer.

### **Excessive/inflexible regulatory burden**

26. Currently, regulatory requirements are applied on a blanket basis to all APs. It can often mean that financially stable, high quality providers are subject to an unnecessary level of bureaucracy, which hinders their operation. The main

recommendations that regulation experts (OECD<sup>18</sup> and others) have made to ensure successful risk based regulation is that the regulatory body responsible for overseeing the sector should be required to start with the risks rather than the rules, be properly empowered, have clear goals on how to assess risk and finally keep the regulatory regime as simple as possible. The exact definition of risk based regulation varies, but it usually means establishing a systematised decision making framework and procedures to prioritise regulatory activities and deploy resources based on an assessment of the risks that regulated bodies pose to the regulator's objectives. The current system for regulation of APs does not allow for this.

## Importance of competition

27. ***There are recognised benefits to increased competition.*** Competitive pressure in a sector drives the suppliers (HE providers in this case), to make their offer more attractive to students, either through reducing prices, improving the offer, or both. Improvements in technology mean that there are even more opportunities for innovation. Making the sector more open would therefore be expected to improve the value of education for students, and so support wider social and economic goals.
28. A more competitive sector could also result in a greater number of providers entering the sector. This provides further pressure to improve the quality of teaching as well as adding diversity amongst providers which could help better meet student needs e.g. through the provision of more flexible learning options or addressing cold spots in terms of geographic coverage. More generally, it would put the sector in a better position to meet any further increases in demand for Higher Education e.g. as a result of widening participation measures or growth in the international higher education market. There are also wider economic benefits. Valero and Van Reenen (2016), for example, find that “increases in university numbers significantly raise future GDP per person”. They have estimated that if there was one new university<sup>19</sup> added to each of the UK's ten regions (as defined in the study), UK GDP would go up by 0.7%.

## Overall market failures in HE

29. At the same time, it is also important to recognise the important role of regulation in protecting students and ensuring the delivery of public policy goals for wider societal benefit. For example, in avoiding providers being incentivised to cut costs to the point that they endanger their finances or offer an inadequate standard of teaching to students. Regulation is necessary to ensure students are protected and the reputation of the sector at home and abroad is safeguarded.

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<sup>18</sup> OECD (2012) “Recommendation of the council on regulatory policy and governance”

<sup>19</sup> Assuming the new universities have the same size distribution as the existing ones. It is likely that new providers would be significantly smaller than the incumbents.

30. The Competition and Markets Authority in its 2015 review of competition within the HE sector highlighted some of the reasons why appropriate regulatory controls are important in the sector:
- i. **Student choice may not be sufficient to drive quality.** HE can be characterised as an ‘experience good’, where quality cannot be observed prior to taking the programme and cannot be easily compared to other programmes on offer (as students only tend to take one undergraduate course in their lifetime). The quality of HE is therefore difficult to predict, observe and define before students start studying. Students may therefore find it difficult to assess in advance the quality on offer and, as a result, may choose a course that does not meet their expectations.
  - ii. **High switching costs.** There are also high barriers to switching (for example, credits might not be transferable and students may have to incur high financial and social costs if they switch institution), which means that students are unable or unwilling to switch if they want to study an alternative programme, or the quality on offer does not match their expectations.
31. Students therefore face two key risks if the sector is unregulated:
- d. Students may not have confidence that they are choosing the right course to suit their expectations;
  - e. Providers may not be incentivised to provide a quality learning experience; and the overall reputation of the sector might be undermined.

## Policy objective

32. The overarching policy objective is to create a higher education sector whereby:
- All HE providers can compete on a level playing field, irrespective of their “label” or history, making the sector more open and competitive;
  - It is easier for existing providers to obtain Degree-Awarding Powers and University Title, while protecting students and the reputation of the sector;
  - Many more HE providers are registered with the regulatory authority, in order to provide greater confidence to students;
  - The administrative burden for existing and new providers of higher education is reduced while unnecessary bureaucracy and barriers for the sector as a whole are removed, primarily by cutting out duplicatory processes and through the application of a lighter touch approach for the majority of providers; and
  - The regulatory system is aligned with Home Office, so that it is possible to proceed with a single set of tests of quality, rather than the current separation of systems.

33. As a result, students will benefit from improved value for money and greater choice and innovation in the sector.
34. This, in turn, should support long-term productivity growth.

## Options under consideration

### Course validation

**Option 0: “Do nothing”.** The existing framework is retained.

#### **Option 1: Reform the validation system**

**a) Introduction of a revised Quality Code for validation (non-legislative).**

The OfS would produce a revised Quality Code to set out what it expects validation agreements to look like (minimum expectations) and what exemplar validation looks like; to enable providers to measure the quality of any validation agreement; and to enable incumbents to advertise their validation agreements as being fully compliant with the Quality Code. There is the opportunity for this to be co-produced via consultation with the sector.

**b) Encouraging or endorsing “exemplar” validating bodies (non-legislative).** The OfS would also take steps to encourage institutions and bodies such as the Open University Validation Service, to improve their validation arrangements and to develop their validation services as a lucrative line of business, in line with the revised code. The OfS could go a step further and request a number of providers to sign up to the higher standards in the code as “exemplar” providers endorsed by the OfS.

**c) Giving the OfS the power to: i) contract with institutions to validate and; ii) validate degrees (legislative).** The OfS would have the power to commission institutions, by contract, to sign up to a code as exemplar providers. The OfS would also have a power to provide a validation service (which could be contracted out to a third party), that Secretary of State would ask to exercise if the two reforms above do not lead to sufficient improvements in the cost and ease of validation.

### Specific course designation

**Option 0: “Do nothing”.**

- The existing framework of specific course designation is retained, which also entails a clear distinction between Higher Education Institutions and APs with specific course designation. Designation would remain at course level, and providers would still have to submit an annual data return to get re-designated.

**Option 1 – move to a level playing field.**

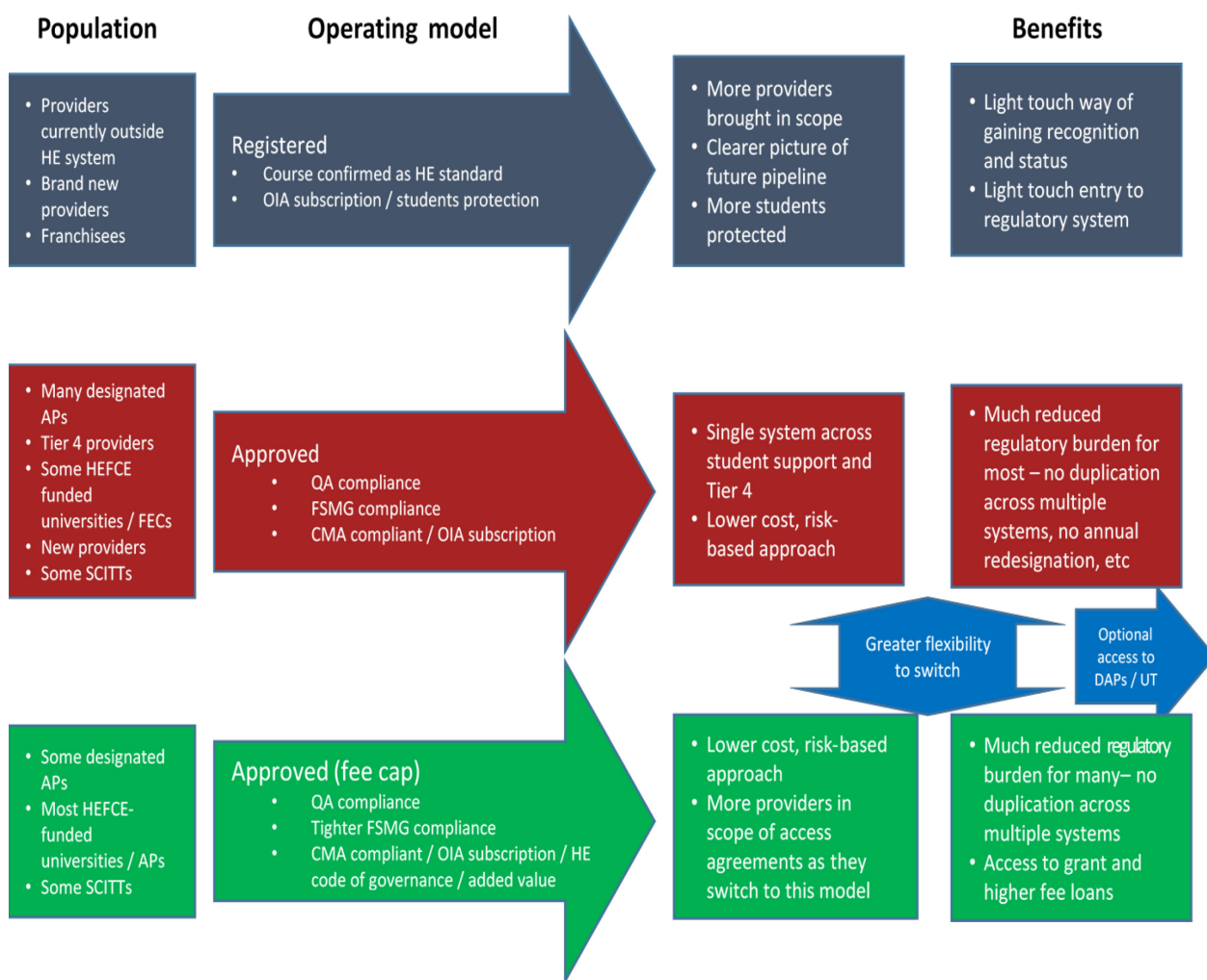
- This involves the creation of a “Registered” category, which will offer HE providers a chance to become officially recognised by the government, subject

to a check of providers' qualifications meeting the Framework for Higher Education Qualifications (FHEQ), and subject to sign-up to the OIA.

- All providers seeking designation for student funding would be able to choose between two operating models (the ability to switch between these models is at present heavily constrained):
  - i. “*Approved*”: Similar to current system of specific course designation – a £6,000 tuition fee loan cap, with the current freedom to set fees at any level, and no requirement to sign up to an access agreement (but with a policy statement on widening participation in HE).
  - ii. “*Approved (fee cap)*”: A £9,000 tuition fee loan cap, a cap on fees at £9,000, eligibility for teaching grant and a requirement to sign up to an access agreement if fees charged are more than £6,000. Those that do not sign up to an access agreement would face, as now, a £6,000 fee cap for undergraduate courses. Providers that select to follow “*Approved (fee cap)*” will be able to access government grant funding and as a result will be subject to tighter funding conditions, appropriate to the higher level of public funding received.



**Figure 3. Proposed system of provider-level operating models**



- All operating models would be at the provider level – replacing the existing system, where a provider could only offer student support for courses that have been designated. Both “Approved” and “Approved (fee cap)” would also grant the provider an opportunity to apply to recruit international students by sponsoring Tier 4 visas for international students, subject to additional migration checks by the Home Office.
- The new common system of risk-based regulation would be designed by the newly established Office for Students. Thus the frequency and intensity of the regulatory checks, as well as levels of risk that will trigger interventions, have not been determined at this point. We anticipate that this new system will build on good practice that is developed in the reforms to quality assessment that HEFCE will introduce for HEFCE-funded providers in 2016/17. The following processes could feature in the new system:
  - **Annually:** All providers are subject to an ‘annual review’ that will test that they continue to meet FSMG and quality requirements proportionate with the requirements of either “Approved” or “Approved (fee cap)”. This means

an end to annual re-designation for APs and maintains the position for current HEFCE designated providers.

- **Based on specific provider's level of risk**, there could also be review visits to assess the provider against the threshold expectations for quality and standards, leading to certain types of further intervention where the provider does not meet those requirements.

## Degree-Awarding Powers (DAPs)

### Option 0: "Do nothing"

- Retaining the existing process for obtaining Degree-Awarding Powers, with a requirement of at least a 4-year track record, with an "all or nothing" outcome of application for DAPs

### Option 1 – more flexible requirements on obtaining DAPs.

- **Probationary DAPs.** Providers would have a new option of obtaining DAPs on a probationary basis for a 3-year period, subject to meeting the same FSMG requirements as for the Approved (fee cap) model. They would then be subject to rigorous monitoring over the 3 years, automatically obtaining full DAPs if the outcome of monitoring is satisfactory.

**Full DAPs.** The track record requirement would be reduced to 3 years, and a wider range of evidence accepted. DAPs could be granted on a limited subject and/or limited level basis to enable easier access. All DAPs to be renewable in the first instance. Explicit sanctions to be introduced to vary or remove DAPs (and UT on loss/non-renewal of DAPs).

## University title

### Option 0: "Do nothing"

- University Title granted to institutions with Taught Degree-Awarding Powers that have at least 1,000 FTE students (750 FTE degree-level students), with 55 per cent of students studying HE courses. Institutions also need to meet the requirements on good governance and long-term financial planning.

**Option 1 – University Title granted to all HE providers with full Taught Degree-Awarding Powers, where more than 55% of students are on HE courses.**

## Risk-based regulatory framework

### Option 0: "Do nothing"

- The level of ongoing regulation (e.g. QAA reviews, course re-designation), remains the same, with no consideration for the level of risk of the provider.

## Option 1 – risk-based regulatory framework.

- The level of regulation is tailored to the level of risk of the provider. OfS/HEFCE uses the institution data and information from previous reviews to determine the level of risk of the provider. For providers deemed to be low-risk, the burden of reviews is reduced. Conversely, where there are issues with financial sustainability or quality, there would be more extensive monitoring in place to ensure students are protected. Should this option be chosen, the OfS will have a duty to develop the framework and apply a risk-based approach to regulation. That means that it is too early to know specifically how many institutions this will affect or the extent to which the burden of legislation will be reduced. Assessment of this option thus can only be based at this stage on assumptions about what a likely framework might look like.

## Background

### The number of HE providers

35. A single set of assumptions regarding the future number of HE providers is used throughout all regulatory impact assessments of the Higher Education Bill 2016. This is set out in detail in Annex A. Due to the interrelated nature of the Government's reform programme we do not attempt to attribute specific impacts to specific measures, but the net effect is set out below:
- A greater number of institutions entering every year.** It is assumed that 30 institutions will start offering HE courses each year following reforms, compared to 20 in the counterfactual. Not all of this change will feed through to an increased number of institutions in the sector, as there is expected to be a competitive churn in the sector.
  - More providers will get (probationary) Degree-Awarding Powers.** The reforms will mean that providers would be able to get Probationary DAPs in parallel with entering at "Approved" (if they meet the FSMG requirements equivalent to "Approved (fee cap)"). If the old system is retained, only very few providers will be able to meet the criteria.
  - More providers will get designated.** Currently, annual re-designation requirements mean the regulation is deterring many providers due to the associated uncertainty and administrative burden.
  - More providers gaining University/University College Title.** In the new system, University Title will be available to all providers with full Taught Degree Awarding Powers, if they have at least 55% of their students on HE courses, reducing the burden on providers. Also, many more providers will become eligible as the requirement on the minimum number of students is removed.

36. Table 2 shows the latest data available on types of provider in the sector, while Tables 3 and 4 show how this might change following reform.

**Table 2. Current number of HE providers (latest available data)**

<b>Category</b>	<b>Number of HE providers</b>
<b>APs</b>	<b>690</b>
Not in the system	573
Have access to student loans	115
Degree Awarding Powers (DAPs)	9 <sup>20</sup>
<b>Higher Education Institutions</b>	<b>132</b>
<b>Further Education Colleges</b>	<b>241</b>
Without access agreements	150
With access agreements <sup>21</sup>	91
<b>TOTAL HE providers</b>	<b>1063</b>

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<sup>20</sup> 7 of these APs also have access to student loans, and are therefore also counted in the 115 APs above.

<sup>21</sup> Only providers with access agreements with Office for Fair Access are allowed to charge more than £6,000 (and up to £9,000) for undergraduate degrees

**Table 3. Forecast number of provider, assuming all reforms are implemented**

	19/20	20/21	21/22	22/23	23/24	24/25	25/26	26/27	27/28
(1) Not in the system	540	492	448	407	368	335	306	282	262
(2) "Registered"	103	120	134	146	157	165	171	176	180
(3) "Approved"	125	139	153	168	183	197	210	222	234
(4) "Approved (fee cap)"	379	387	395	404	414	423	432	441	449
Total recognised (2)+(3)+(4)	607	646	683	719	754	786	814	839	862
Total designated part of (3)+(4)	474	494	515	537	560	582	604	624	643
Total validated (1)+(2) + part of (3) and (4)	752	734	717	701	686	673	662	652	644
Total with DAPs (part of (3) and (4))	158	168	179	191	204	216	229	241	253

**Table 4. Net forecast change in the number of providers in the system, due to introduction of reforms**

	19/20	20/21	21/22	22/23	23/24	24/25	25/26	26/27	27/28
Validated	6	4	1	-3	-7	-12	-15	-19	-22
Designated	11	22	34	45	55	66	75	85	92
DAPs	14	23	32	41	52	62	73	83	92

## Number of students

### English students

37. The proposed measures are expected to open up the HE sector, make it more competitive and improve value for money for students. This should both increase the attractiveness to students of participating in higher education and their ability to find an institution and course that suits their circumstances and career aspirations. A proportionate and more streamlined system of regulatory checks will ensure that while the sector grows, the quality standards for the sector remain high. Students benefiting from this change would include those school leavers who currently choose to enter the workforce directly, as well as more mature students who will now find it easier to identify an appropriate course.
38. As a result of the proposed policy measures, it is expected that more providers will sign access agreements, setting out the measures they will take to improve participation amongst students from underrepresented groups. This will work in concert with measures within the Teaching Excellence Framework reforms that mean providers will gain financial and reputational rewards for delivering high quality teaching across the different groups within their student population.
39. Over time, as we see greater competition and better student choice take effect, there is likely to be a redistribution of students across providers; for example, from currently HEFCE-funded HEIs to new providers and existing APs, and from lower quality providers to those offering a better option to students.
40. Overall, we expect the Government's HE reforms, including the creation of a single entry gateway, to increase student numbers and support widening participation. However, we have not modelled this increase due to the challenges of accurately capturing the behavioural changes, amongst providers and individuals, that will result from these changes and ascribing them to a particular measure within this interconnected package of reforms.

### International students

41. **Improved quality of teaching overall.** A greater number of providers should increase competition within the sector, leading to more innovation and improved choice for students, with a greater range of subjects, locations and teaching models available. It should also put more competitive pressure on incumbent providers to ensure they continuously improve their provision. These effects should benefit international as well as domestic students.
42. **A larger number of providers are able to recruit international students.** The proposed reforms would mean that a larger number of providers will be able to provide student loan funding for their students, which will consequently increase the provider's income. Increase in income will allow the providers to improve the

quality of their course offering for all students, including international students. Secondly, the proposed policy would remove duplicatory checks in gaining a Tier 4 sponsor status, which would allow a greater number of providers to recruit international students.

43. For both of these reasons, it is expected that these reforms will help English higher education providers become even more attractive to international students. The OECD has projected that the international student market (number of internationally mobile students) is likely to reach 8 million students a year by 2025<sup>22</sup>. If the proposed measures allow the UK (and England in particular) to maintain or even increase its share of the international market, this could have a large beneficial effect on the UK economy.

### Assessing what the risk-based framework will look like

44. In the new system, the frequency and burden of re-designation (for APs) and QAA reviews will be greatly reduced for providers deemed low-risk. More widely, the OfS will also have an overall duty to apply regulation based on risk. However, the framework will only be developed once the OfS is in operation. It is expected that those providers assessed as low or medium risk will face lower regulatory burdens. However, at this point, with the policy design being developed, we are not able to robustly estimate how far burdens will be reduced. We instead use a set of indicative assumptions to reflect one possible scenario. A more detailed assessment will only be possible once the OfS is established (expected in 2018).

### Estimating risk levels of different institutions

45. A simple way to estimate overall risk levels would be to assume an even split between high/medium/low-risk institutions. However, in the case of the HE sector this is unlikely to be a realistic assumption – currently HEFCE-funded institutions are mostly very stable financially and have a long history of providing HE courses.
46. Another approach would be to look at existing information about institutions and from this assume a rough distribution in terms of risk levels. This would give a much better picture of which providers are likely to end up in the high-risk bracket. The approach taken in this IA is to assume that there are only two categories of risk – low-risk and high-risk providers. The system designed by the OfS will undoubtedly need to be more sophisticated, with more differentiation of risk levels and associated regulatory checks. However, we believe that two categories are sufficient for an ex ante assessment of the broad impacts of these reforms.
47. **Types of risk.** The existing process for reviewing applications for specific course designation comprises of two components – an FSMG assessment and a review by QAA. This recognises the two key categories of risk in Higher Education –

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<sup>22</sup> OECD (2012) “Assessment of Higher Education Learning Outcomes. Feasibility Study Report”

financial and governance risk (ultimately, risk of bankruptcy) and the risk of degrees not meeting the quality standards of the sector. It is reasonable to expect that these two categories will be a key part of the OfS's assessment.

48. **Financial risk.** Higher Education Institutions are required to publish their annual accounts, which show a range of indicators of financial sustainability. APs also submit financial data to DfE as part of the annual re-designation process. Two indicators are used here to assume that a provider is high risk:
- a. *Operating loss in two consecutive financial years:* Making losses for two years could indicate that a provider's operating model might be unsustainable in the long run. However, for providers with large amounts of quantifiable assets, losses in two consecutive years might not threaten their financial health significantly.
  - b. *Net liabilities:* This addresses the issue above, identifying the institutions for which liabilities exceed assets, meaning that the provider would be less able to withstand bad financial results.
49. Based on these two indicators, 20% of APs and 5% of HEIs might be considered higher-risk in the risk-based framework.
50. **Quality risk.** The best available indicator for this is the provider success rate for their QAA reviews. If QAA deems an institution's quality assurance measures to be unsatisfactory, the institution has to implement improvements in order to remain approved by QAA. While an unsatisfactory outcome in the review could be caused by poor financial performance or non-compliance with bureaucratic burdens; it is also likely to indicate poorer provision. Over the past three years, 2% of the reviews for HEIs, 11% of the reviews for APs and 33% of the reviews for FECs found unsatisfactory outcomes.
51. **Overall risk rating.** These two indicators of risk are then combined into a single measure. It is assumed that for providers with high risk in one of the categories (financial or quality), the regulatory checks would be more frequent or more intensive. The overall risk profile of a provider is taken to be the average of the financial and quality risk.

**Table 5. Estimates of financial and quality risks by type of HE provider**

	HEIs	APs	FEC
Financial risk %	5%	20%	10%
Quality risk %	2%	11%	33%
Overall risk %	3%	16%	22%



## Sources of data on burden on business

The estimates of the administrative impact on business come from several sources:

- HEFCE (2015) “*The cost to providers in England of existing quality assurance and quality assessment practices*”. A report on the cost of the Quality Assurance system, which also assessed a range of related costs, including subscription charges for OIA, QAA etc.
- PA consulting (2009) “*Positive accountability. Review of the costs, benefits and burdens of accountability in English higher education*”.
- DFE-funded research reports on the AP sector<sup>23</sup> (2013 and 2016) to understand its size and structure, including estimates of the number of APs in the UK and a survey of a sample of APs to understand their students, staff, range of courses offered and plans for the future.
- DFE ad-hoc survey of APs (2016). The survey was conducted over late 2015 and early 2016 to gather APs’ views on the policies proposed in the Higher Education Green Paper and their future plans. Forty-two providers responded, with thirty-five offering complete responses to the survey. Full findings of the survey are provided in Annex B.

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<sup>23</sup> BIS (2013) “*Privately funded providers of higher education in the UK*” and BIS Research Paper no.227 (2016): *Understanding the market of alternative providers of higher education and their students in 2014*

## Analysis of policy options

52. Table 6 below summarises the net business impact of different policy measures, quantified as a part of this impact assessment. Benefits to business are shown as positive numbers. All numbers are shown in real (inflation-adjusted) terms, in 2017 prices. It is assumed that all impacts will grow in line with economy-wide inflation (RPIX).

**Table 6. Summary of quantified impacts on business, £million**

	18/19	19/20	20/21	21/22	22/23	23/24	24/25	25/26	26/27	27/28
<b>Impact to providers of creating a single entry gateway</b>	<b>-2.1</b>	<b>13.7</b>	<b>15.6</b>	<b>17.8</b>	<b>20.2</b>	<b>22.9</b>	<b>25.4</b>	<b>27.8</b>	<b>30.2</b>	<b>32.5</b>
Creating a Registered - Basic category	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Providers moving to Approved (fee cap)	0.0	12.3	14.1	16.1	18.3	20.7	23.1	25.3	27.5	29.6
Renewal of designation	0.0	0.6	0.7	0.8	0.9	1.0	1.1	1.1	1.2	1.3
Duplication in Tier 4 process	0.0	0.8	0.9	1.0	1.1	1.2	1.3	1.4	1.5	1.5
Familiarisation with Categories	-2.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>OfS Commissioning Arrangements &amp; Validation</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>DAPs</b>	<b>0.0</b>	<b>0.2</b>	<b>0.2</b>	<b>0.3</b>	<b>0.3</b>	<b>0.3</b>	<b>0.3</b>	<b>0.3</b>	<b>0.3</b>	<b>0.3</b>
<b>University Title</b>	<b>0.0</b>	<b>0.1</b>	<b>0.1</b>	<b>0.1</b>	<b>0.1</b>	<b>0.1</b>	<b>0.1</b>	<b>0.1</b>	<b>0.1</b>	<b>0.1</b>
<b>Total</b>	<b>-2.1</b>	<b>14.0</b>	<b>15.9</b>	<b>18.1</b>	<b>20.6</b>	<b>23.2</b>	<b>25.7</b>	<b>28.2</b>	<b>30.6</b>	<b>32.8</b>

## Course Validation

### Impact on business

53. As outlined above, validation agreements are currently the only way to enable new providers without their own DAPs to enter the sector. However, as outlined in the “problem under consideration” section, they act as a significant barrier to entry into the sector, thus hampering competition. One way to address that would be giving a body, external to the sector, an ability to validate degrees. However, as highlighted in the HE Green Paper consultation responses, there is a clear risk of centrally-validated degrees being perceived as less valuable, irrespective of the quality of education. In particular, there is concern that a centrally-validated degree could be seen as a signal that the provider has not met the quality criteria for either obtaining its own DAPs or finding another validating partner.
54. The proposed measure is therefore to improve the existing arrangements, to reduce the cost of entry and overall administrative burden of entering the sector. The non-legislative measures will be key to achieving this. Option 1c (legislation) would, in addition to enabling the OfS to contract institutions to validate, also provide OfS with an opportunity to validate degrees. However, this latter proposal is envisaged as a last-resort measure, only to be used if other measures do not work. As Option 1c would not impose any additional cost on business, the costs/benefits of it are not monetised.

### *Benefits*

55. **More providers entering the sector/offering a greater number of courses.** There is a removed barrier to entering the sector/growth, where costs and complexity of validation arrangements were prohibiting providers from entering or offering new courses.
56. **Reduced cost/complexity.** It is expected that the impact of giving the OfS the power to validate degrees will mean a broader validation options for new entrants into the sector will be available. It will then mean a further reduction to the administrative cost of finding validation partners, agreeing a contract and complying with conditions of the contract.
57. If there is a reduction in costs for new entrants and providers who need to have their degrees validated it is assumed that this is matched by a corresponding decrease in income for validating institutions.

## Costs

58. Giving the Office for Students a legislative power to validate courses would not mean an additional cost on the sector – institutions with DAPs would still have an opportunity to sign validation agreements with other providers.

## Single entry gateway – Impact on Business

59. The proposed system of provider-level operating models will differ from the current system in four main ways:
  - i. Providers will be able to opt for the voluntary “Registered” model, which is expected to bring a lot of institutions into the system that were previously not recognised or approved by government;
  - ii. Single entry gateway. There will be a move from a system of specific course designation to institution-level operating models (“Approved” and “Approved (fee cap)”), which will enable APs to be subject to the same conditions as HEFCE-funded HEIs;
  - iii. The system of monitoring/renewal of designation will be changed to a less burdensome risk-based system; and
  - iv. There would no longer be duplication between the process of obtaining a Tier 4 visa and the designation process. At the moment there are duplicating checks of quality and FSMG for Tier 4 and designation.

## Creating “Registered” status for providers

### *Benefits*

60. The creation of “registered” status for providers will allow a greater number of providers to enter the system and be recognised by the government, subject to meeting the light-touch regulatory conditions. This will not require any mandatory action on the part of HE providers; rather it simply gives them the opportunity to provide an additional signal to prospective students that they meet the basic expectations around academic standards and the ability of students to make complaints.
61. In contrast, in the current system, providers have the option of either remaining outside the regulated system, or becoming part of the regulated system which, as it automatically means their students can access public support through the student finance system, means meeting a set of more demanding quality and financial management tests. The creation of ‘registered’ status introduces an intermediate status, where the provider is recognised as part of the English HE system, but without the expectations associated with being eligible to receive students funded through the student finance system. There will be no compulsion to register in this way, and providers can choose to remain outside the regulated

system altogether. This is then classed as a “permissive” change, as defined in the Better Regulation Framework Manual.

62. The assumption is that the reputational benefits to providers of becoming ‘registered’ will at least be as big as the regulatory costs. The costs discussed in the section below therefore do not affect the estimate of net annual cost to business.
63. The reputational benefits to providers are very uncertain and difficult to estimate, and have therefore not been monetised.

### Costs

64. To enter as “Registered”, the provider will need to undergo a check on whether their qualifications are consistent with the Framework for Higher Education Qualifications (FHEQ)<sup>24</sup>, meeting the minimum standard of quality. At present, many of these providers are not subject to any quality checks.
65. “Registered” providers will also be expected to sign up to the Office for Independent Adjudicator (OIA). Currently, only the providers that access student support have to subscribe to the OIA (however, many others subscribe voluntarily). Table 7 below shows the existing subscription fees. On top of the “core” subscription fees, there is also a case-based element, which is charged for providers with an above-average number of disputes for their size band. Around 33% of providers currently pay those fees, with an average amount of £1,400<sup>25</sup>.

**Table 7. OIA subscription fees, 2017**

Student numbers	OIA Band	HEIs and APs	HE in FE providers
Up to and including 200 students	AA	£414	£290
201 - 500*	A	£856	£600
501 – 1500	B	£1,728	£1,210
1501 – 6000	C	£9,292	£6,504 <sup>26</sup>

66. To estimate the overall cost to the sector of entering as “Registered”, it is necessary to understand the size distribution of those who may enter as “Registered” providers. We have taken as a reasonable proxy the existing size

<sup>24</sup> <http://www.qaa.ac.uk/publications/information-and-guidance/publication?PubID=2718#.VvpsxkZRy6Q>

<sup>25</sup> HEFCE (2015) *Costs to HE providers of QA practices*

<sup>26</sup> OIA subscription bands are differentiated up to 100,000 students, however, there are no APs or FECs with more than 6,000 HE students.

distributions of APs outside the system and FECs teaching HE courses. Table 8 shows the existing size distribution.

**Table 8. Assumed distribution of providers by size<sup>27</sup>**

	% FECs	% APs
Up to and including 200 students	50%	79%
201 - 500*	31%	11%
501 – 1500	15%	8%
1501 – 6000	3%	1%

67. The table below then shows the overall costs on “Registered” providers.

**Table 9. Added cost of OIA subscriptions for "Registered" providers**

£million	18/19	19/20	20/21	21/22	22/23	23/24	24/25	25/26	26/27	27/28
Number of “Registered” APs	0	68	87	103	116	129	138	146	152	156
Total core fees	0	0.04	0.06	0.07	0.08	0.08	0.09	0.10	0.10	0.10
Number of “Registered” FECs	0	35	33	32	30	29	27	26	24	23
Total core fees	0	0.02	0.02	0.02	0.02	0.02	0.02	0.02	0.02	0.02
Total case fees	0	0.05	0.06	0.06	0.07	0.07	0.08	0.08	0.08	0.08
Total fees, £million	0	0.12	0.14	0.15	0.16	0.18	0.19	0.19	0.20	0.20

68. While these added checks will be supported by legislation, they would not represent an additional cost to business. The creation of “Registered” status would be defined as “permissive” legislation, as it allows rather than forces businesses (HE providers) to do something they could not have done previously. There could then be a reasonable expectation that the benefits that providers will derive from entering at “Registered” will outweigh the costs of entry. Therefore, it is assumed that the benefits to providers will at least equal any costs.

<sup>27</sup> Source: HEFCE regional profiles student data and BIS (2016) “Understanding the market of APs of higher education and their students in 2014”

## Creation of single entry gateway

### Benefits

69. **An increase in the number of designated providers.** Increased clarity of the system and a larger number of options for entry would provide a greater incentive for new HE providers to enter the sector.
70. The creation of the single entry gateway will also mean that eligibility for full undergraduate student loan funding (up to £9,000) and teaching grants would be extended to more institutions (“Approved (fee cap)”). APs in the current system have an ability to become designated for HEFCE funding, however, the requirements are quite restrictive, and in reality, no APs have gained access. Thus, the creation of “Approved (fee cap)” is likely to mean an increase in provider’s income in one of the two ways set out below. It is assumed that this would only affect existing APs, as FECs teaching HE courses can already charge £9,000 fees by signing an access agreement, with no additional requirements on distinctiveness, etc.
71. **Access to teaching grant.** Providers entering at “Approved (fee cap)” would gain access to HEFCE teaching grant. That grant is currently split into three key parts: funding for high-cost subjects, the Student Opportunity Fund and targeted funding allocations. However, this grant funding aims to cover the added costs of this provision. Therefore, access to this funding is unlikely to lead to a net benefit for the institution; instead, it will allow the institution to teach a broader range of courses than before. It is assumed that overall, access to teaching grant will result in a zero net benefit to HE providers, however, more providers would gain access to the teaching grant and be enabled to teach higher cost subjects.
72. **Increased course fees.** The creation of Approved (fee cap) will mean that providers who otherwise would have their student loan funding capped at £6,000, could move to a model where they would be able to offer their students up to £9,000 of student loans. It is assumed that they would only be incentivised to do this if their undergraduate fees are currently between £6,000 and £9,000. If fees are lower than £6,000, the provider would not gain anything from entering as Approved (fee cap) because student loan funding would already cover the value of their fees. If fees are higher than £9,000, they would be subject to a cap on fees and therefore lose income.
73. As explained below, access agreements mean that Approved (fee cap) providers have to support their students financially. They would then only have an incentive to enter at this model if the added income from course fees/teaching grant exceeds the cost of access agreements.
74. An increased amount of student support will mean that some providers could increase their fees for undergraduate courses, with the full amount still covered by the student loan. This would give them an increased income, which they could

then invest in improving their offering for students. This investment could also be necessary for them to be able to compete with incumbent providers in the reformed sector.

75. It is expected that there will be significant competition for students in the new system, so it is unlikely that providers would immediately raise their fees up to the cap. An average number of students at designated courses at a designated AP is 501 according to AP finance returns to DFE. Using the assumptions about number of designated providers, this would result in a **£20.7 million<sup>28</sup> benefit** to the sector in 2019/20, up to **£49.8 million** in 2027/28.

**Table 10. Added income for APs moving into Approved (fee cap)**

	18/19	19/20	20/21	21/22	22/23	23/24	24/25	25/26	26/27	27/28
Number of “Approved (fee cap)” APs	0	41	47	54	61	69	77	85	92	99
Net added income, £ million	£0.0	£20.7	£23.7	£27.0	£30.8	£34.8	£38.8	£42.6	£46.3	£49.8

### Costs

76. Increased competition for incumbent providers as entry into the sector is made easier and the playing field for incumbent HEIs and APs is made more level.
77. **Signing access agreements.** As outlined in the above section on benefits, entering at “Approved (fee cap)” would be a significant financial benefit to providers currently charging up to £9,000 in fees; however, this would require satisfying more stringent conditions, for example financial sustainability, management and governance, and signing an access agreement. The FSMG test is unlikely to impose a markedly higher cost on the provider, as the biggest part of that (audited accounts) remains the same.
78. The most recent estimate of the cost to institutions of signing an access agreement and complying with conditions come from a 2009 paper, which suggests £0.8 million for the whole sector, or £6,670 per HEI<sup>29</sup> (£7,433 in 2016 prices). However, the process since then has become significantly less burdensome so these costs should be treated as an upper estimate. Based on this cost, the table below shows the overall administrative cost of signing the access agreements (which is outweighed heavily by the financial benefits).

<sup>28</sup> 41 (number of providers) x 501 (students per provider) x £1,000 (expected increase in income per student) = £20.7 million. £1,000 per student assumption of increase in tuition fee income is based on financial data for existing APs with designated courses.

<sup>29</sup> PA consulting (2009) “*Positive accountability. Review of the costs, benefits and burdens of accountability in English higher education*”.



79. **Financial support for disadvantaged and other underrepresented groups.** Access agreements specify a range of measures that the HE provider has to undertake to advance equality of opportunity and improve access to HE for students from lower income backgrounds and underrepresented groups. This includes a range of financial support measures, including bursaries, scholarships and fee waivers. The Office for Fair Access (OFFA) publishes the cost of access agreements to providers on an annual basis<sup>30</sup>.
80. The most recent numbers cover access agreements for academic year 2016/17. They show average fees at providers with access agreements to be £8,781, or £8,391 after all the financial support, specified in the access agreement, is taken into account. Thus on average, an access agreement means the provider offering an average **£390** of financial support per student. This would then be an additional cost to providers in the new system.

**Table 11. Added cost of Access Agreements for Approved (fee cap) providers**

	18/19	19/20	20/21	21/22	22/23	23/24	24/25	25/26	26/27	27/28
No. of "Approved (fee cap)" APs	0	41	47	54	61	69	77	85	92	99
<b><i>x £7,430 administrative cost of agreeing an Access Agreement (AA) with OFFA</i></b>										
Added admin cost (£m)	£0.0	£0.3	£0.4	£0.4	£0.5	£0.5	£0.6	£0.6	£0.7	£0.7
<b><i>x £390 cost of AA measures x 501 avg. students</i></b>										
Added cost of financial support (£m) <sup>31</sup>	£0.0	£8.1	£9.2	£10.5	£12.0	£13.6	£15.1	£16.6	£18.0	£19.4

## Renewal of designation agreements

### Benefits

81. In the existing system, APs with designated courses are subject to a process of annual re-designation, which means that they:
- Face an administrative cost of going through the process every year
  - Face very significant uncertainty, as they are unable to advertise their courses as providing access to student loans

<sup>30</sup> <https://www.offa.org.uk/publications/analysis-data-and-progress-reports/>

<sup>31</sup> For 19/20: 41 (APs in approved (fee cap) model) x £390 financial support per student x 501 average students = £8.1 million

82. The new system, will adopt a risk-based approach, applied across all types of providers irrespective of their “label”. This will affect APs in particular, as for them a burdensome annual re-designation process will be replaced with a more flexible and light-touch system of monitoring. Providers would get designated (at “Approved”/“Approved (fee cap)”) and face flexible ongoing monitoring, based on provider’s level of risk. The specific system of regulatory checks will be designed by Office for Student, the new regulator for the HE sector.
83. DfE’s AP survey has identified that the existing annual re-designation process<sup>32</sup> takes up to 43.5 hours of academic staff time and 103.5 hours of administrative staff time at each institution, which amounts to **£2,740**<sup>33</sup> annual burden.
84. For modelling purposes, it is assumed that on average, providers would face a review visit from OfS every five years, based on HEFCE processes that will be in place from 2016/17. In practice, the frequency and intensity of reviews is likely to vary based on a provider’s level of risk. It is assumed that the five-yearly review visit in the new system would have a similar administrative burden to re-designation, thus reducing the administrative cost by 80% over every five-year period.
85. There would still be a degree of monitoring on an annual basis, which is expected to be proportionate rather than stringent. For low-risk providers, it is assumed that the costs will be 75% lower, at £685 a year<sup>34</sup>. For high-risk HE providers, it is assumed that a similar burden to the existing system will carry on.
86. The table below shows the calculation of the benefits. The proportion of providers who are classed as “high-risk” is estimated as 16% overall (see Table 5). The numbers are calculated as:
- a. “Do nothing” cost of complying assumes that providers face annual re-designation, thus incurring £2,740 cost annually + £8,000 average cost of maintaining audited financial accounts (HEFCE estimates)
  - b. Option 1 cost of complying assumes the full costs (£2,740 +£8,000) incurred once every 5 years for low risk providers, and every year for high-risk providers. Low risk providers also incur £685 cost of annual monitoring.

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<sup>32</sup> Online survey conducted for this IA. Figures represent a truncated mean, with top and bottom 10% removed to exclude extreme responses.

<sup>33</sup> Using hourly salaries from ONS (2017) “Annual Survey of Hours and Earnings 2016”. The estimates of average hourly wage are £25.42 for “HE teaching professionals” and £10.83 for “Administrative occupations”.  $43.5 \times £25.42 + 103.5 \times £10.83 = £2,230$ . We then adjust for 2017 prices and add the standard assumption on non-wage staff costs of 19.8%, to get £2,740.

<sup>34</sup> Based on DfE estimates

**Table 12. Cost saving due to removal of annual re-designation**

	18/19	19/20	20/21	21/22	22/23	23/24	24/25	25/26	26/27	27/28
Number of “Approved” APs (seeking designation)	0	95	107	119	132	146	159	171	183	194
Low risk	0	80	90	100	111	123	134	144	154	163
High risk (16% of total APs)	0	15	17	19	21	23	25	27	29	31
Expected Option 1 cost of complying, (£m)	£0.0	£0.4	£0.4	£0.5	£0.5	£0.6	£0.7	£0.7	£0.8	£0.8
“Do nothing” cost of complying (£m)	£0.0	£1.0	£1.1	£1.3	£1.4	£1.6	£1.7	£1.8	£2.0	£2.1
Cost saving in the new system (£m)	£0.0	£0.6	£0.7	£0.8	£0.9	£1.0	£1.1	£1.1	£1.2	£1.3

87. The uncertainty that providers currently face is also affecting the recruitment of students, as the timings of designation mean that students do not normally find out at the time of application whether they will have access to a student loan. This is corroborated by the findings from the survey of existing APs with designated courses<sup>35</sup>. 82% of the providers surveyed agreed that “uncertainty related to annual re-designation had a material effect on their institution”. In the qualitative responses, most of those affected highlighted difficulty recruiting students as a key issue, with examples including:

- *“We produce the prospectus at least 12 months in advance and we cannot stipulate that courses are designated for SLC funding”*
- *“You cannot plan a long term strategy based on annual re-designation process that confirms your courses eligibility 3 months before start of the course year. This affects adversely on recruitment and selection of learners, resource planning and overall quality assurance processes.”*
- *“As for the last two years we have not been given approval until June/July; potential students have gone to a local university offering a similar course as student loans funding is secure their”*

88. This demonstrates that the removal of annual re-designation is quite likely to allow APs to recruit a markedly greater number of students, helping widen participation and increase competition in the sector.

89. However, we are unable to reliably estimate the extent to which the number of students recruited will increase, and whether these extra students are additional to the HE sector or would have otherwise studied at competitor providers. Given

<sup>35</sup> Internal DFE survey of APs with designated courses

the scale of changes to the system, it is also difficult to distinguish the impact of this change from other reforms. Where the extra students recruited would have otherwise studied at HEIs or FECs, this change is likely to reflect a more efficient distribution of students, with a greater matching of supply to students' preferences. Due to these challenges, the impact of reduced uncertainty is not included within the overall estimate of direct impact on business, but noted as a non-monetised benefit to providers.

90. However, to illustrate the potential benefits of removed uncertainty, we assume that the changes in designation process will mean that “Approved” (with or without fee cap) APs are able to recruit 5-20% more students, net of displacement. Assuming that the average surplus earned per student will remain the same, this implies existing APs would be able to increase their operating surplus by 5-20%. Based on the financial data on APs with designated courses, a 5-20% higher operating surplus would on average amount to **£9,500-£38,300** per HE provider<sup>36</sup>. The table below demonstrates the potential impact on HE providers of three scenarios – low (5% more students), normal (10% more students) and high (20% more students).

**Table 13. Expected increase in AP operating surpluses for three indicative scenarios**

£million	18/19	19/20	20/21	21/22	22/23	23/24	24/25	25/26	26/27	27/28
Number of designated APs	0	95	107	119	132	146	159	171	183	194
Business impact (5%)	0.0	0.9	1.0	1.1	1.3	1.4	1.5	1.6	1.8	1.9
Business impact (10%)	0.0	1.8	2.0	2.3	2.5	2.8	3.1	3.3	3.5	3.7
Business impact (20%)	0.0	3.6	4.1	4.6	5.1	5.6	6.1	6.6	7.0	7.4

### Costs

91. **Increased monitoring for high-risk providers.** In the new system, the burden of regulation will be tailored to the level of risk of the provider. For particular high-risk providers, this could mean a greater level of monitoring than in the current system (which would be more than outweighed by reduced amount of regulatory checks). While there could be increased costs on high-risk providers, it is unlikely, as the new system will be based on more flexible monitoring rather than rigid regulatory

<sup>36</sup> Using confidential internal DFE/HEFCE finance data for APs with designated courses, average operating surplus per student is £383. Average number of students is 501.

For low estimate we assume:  $501 \times 5\% = 25$  additional students,  $25 \times £383 = £9,500$  added surplus.

For central estimate, we assume:  $501 \times 10\% = 50$  additional students,  $50 \times £383 = £19,100$

For high estimate we assume:  $501 \times 20\% = 100$  additional students,  $100 \times £383 = £38,300$

requirements. The added costs would be expected to be justified, as the burden of monitoring will be reallocated to where monitoring is most needed and students are at the biggest risk.

## Duplication in Tier 4 process

### Benefits

92. In order to be able to recruit international students, a provider has to have the status of Tier 4 visa sponsor. Part of the requirements on providers to become a Tier 4 sponsor are the same as those for specific course designation – namely, FSMG check and Higher Education Review by QAA. If a provider is both designated and a Tier 4 sponsor, this implies duplication in the review process, imposing additional costs on the provider.
93. DFE monitoring data on existing designated APs shows that 46% of them currently have Tier 4 sponsor status. A HEFCE report on the cost of regulation<sup>37</sup> assesses the cost of a Higher Education Review for an AP at £17,200 a year. The key cost of an FSMG check is maintaining audited annual accounts – however, that would not be duplicated, and the administrative cost of submitting accounts/management statements is assumed to be minimal. The table below shows the calculation of the extra cost saving, if the duplication of QA reviews is removed. This assumes 100% duplication – which could be an overestimate, as part of the evidence collection work would be reused. The assumption is then that providers do not face the additional cost in the new system.

**Table 14. Cost savings due to removed duplication between Tier 4 sponsor application and course designation**

	18/19	19/20	20/21	21/22	22/23	23/24	24/25	25/26	26/27	27/28
<b>Designated APs</b>	0	95	107	119	132	146	159	171	183	194
<i>x 40% providers with Tier 4 licence</i>										
<b>Number of providers</b>	0	44	50	55	61	68	74	80	85	90
<i>x £12,000 annual cost of QAA review removed from the system</i>										
<b>Cost saving in the new system (£m)</b>	£0.0	£0.8	£0.9	£1.0	£1.1	£1.2	£1.3	£1.4	£1.5	£1.5

<sup>37</sup> “The cost to providers in England of existing quality assurance and quality assessment practices”, HEFCE. The 2015 report has limited data on APs. It estimated an annual cost of £22,100 and £12,100 to HEIs and FEC, respectively. £16,600 is a mid-point of these two estimates because we have assumed that the average administration burden for an AP would be in between an HEI and FEC. We have adjusted £16,600 to 2017 prices.

## Familiarisation with Single entry gateway

94. Overall, the creation of single entry gateway will streamline the process of entering the HE sector for new providers. The changes mean that new providers will need to familiarise themselves with new guidance, which will help them understand the streamlined and simplified entry route. Existing providers will also need to familiarise themselves with the new system to understand what it might mean for them and to help decide whether they might want to change their activities in light of the new opportunities created by the new system, for example the ability of Alternative Providers to switch more readily to fee caps. It is assumed that they will only make such a change if they judge the benefits to be greater than the costs.
95. However, importantly, none of the changes listed above introduce any new tests that are significantly different from those that currently exist. The approach taken in the new regulatory framework will build on current approaches to testing providers ahead of entry and monitoring, but will be more streamlined and flexible. The reforms would reduce the frequency of regulatory checks for the vast majority of providers and remove duplication, but they would not introduce changes to the key regulatory checks – namely, the QAA Higher Education Review and FSMG<sup>38</sup> checks. We therefore believe that any familiarisation costs are likely to be quite small, and for new providers are actually likely to be less than with the previous system.
96. The single entry gateway would be operated by the new regulator of the HE sector, the Office for Students, which would assume similar functions to those currently performed by HEFCE and OFFA. The updated guidance on the processes would then be issued by the Office for Students once it is established. At this point, therefore, it is too early to estimate the costs of businesses familiarising themselves with the guidance, as the processes are yet to be developed. As highlighted in the previous paragraph, however, these costs are expected to be very low, especially relative to the overall impacts of the policy. Because of that, it is not considered proportionate to monetise familiarisation costs at this stage.
97. The most significant costs of this measure are likely to be associated with the HE providers' decision making in response to the regulatory changes. In particular, the wider range of options available will mean that HE providers will have to look at their long-term strategy and assess whether they need to be moving to a different operating model. Plus, the creation of probationary Degree Awarding Powers will increase the choice available to them and could lead them to consider whether they want to remain validated or acquire their own DAPs.

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<sup>38</sup> Financial Sustainability, Management and Governance

98. The expectation is that a typical HE provider would establish a working group that would make an assessment of how the provider could respond to improved opportunities as a result of reform. This is expected to take two working days of a six-person team. They would then present this assessment to the provider’s senior management team/executive board, which would then consider their recommendations on how to update the provider’s business plan in response to the reforms. On average, this is expected to take-up half a day (four hours) of six senior executives. The cost estimates have been developed working with the sector representative body for Alternative Providers, StudyUK, to ensure they are a fair representation of typical decision making processes in the sector.
99. We assume that all existing regulated providers registering with the OfS will need to familiarise themselves with the single entry gateway. Therefore, an estimated 495 existing providers will incur an estimated one-off familiarisation cost of £4,300 in 2018/19. The total familiarisation cost is £2.1m, see Table 15 for the full breakdown.
100. We do not quantify the familiarisation costs for new and non-regulated providers joining the OfS register, as these providers would have needed to familiarise themselves if entering the existing regulatory system, and we assume these costs are similar.

**Table 15. Cost of decision making for HE providers in response to reforms**

Category	Cost
Cost of working group (16 hours x 6 staff members x £31.3 <sup>39</sup> )	£3,000
+ Cost of executive board time (4 hours x 6 staff members x £54.0)	£1,300
= Total staff cost	£4,300
+ overheads (+19.8%)	£4,7
Number of businesses affected (APs and HEIs in regulated system in 2018/19)	495
<b>Total cost</b>	<b>£2.1 m</b>

## Single entry gateway - Impact on students

### Better value for students

101. The changes listed above would make the monitoring less burdensome for APs, reduce barriers to entry and create a consistent system for all HE providers. All of

<sup>39</sup> £31.3 is a median hourly salary for “Senior professionals of educational establishments”; £54.0 is a median hourly salary for “Chief executives and senior officials” after adding a 19.8% non-wage cost uplift and adjusting to 2017 prices. Source ONS (2016) “Annual survey of hours and earnings 2016”

this will lead to a more competitive sector, where HE providers with the best offer are likely to benefit the most.

102. There are three possible responses:

- i. **A reduction in prices.** We do not expect this to be a widespread response. The cap on undergraduate tuition fees acts as a price ceiling in the sector and students have not shown strong sensitivity to the price of education. A reduction in price would lead to decreased income for the provider.
- ii. **Investment in improving quality.** Greater competition could mean that providers would need to increase their spending on staff, facilities and other factors that influence the attractiveness of their offer.
- iii. **Greater innovation and differentiation in their provision.** Greater competition could also lead them to look for more innovative ways of teaching, to stand out from the competition and provide greater value for money. This could include greater use of IT in teaching, compressed degrees, new courses etc.

103. All of the potential effects of increased competition ultimately lead to significantly improved value for students. However, the behavioural responses of different types of providers are quite uncertain, and the impacts on the sector, while expected to be significant in the long-term, are difficult to robustly estimate at this point.

## Financial support for students from underrepresented groups

104. As a result of the reforms, a much larger number of HE providers will sign access agreements with OFFA. This will mean that many more providers will provide financial support to students from underrepresented groups, which would widen participation in HE and advance equality of opportunity. This is expected to be a key financial benefit to students, resulting from these measures.

105. The section above on business impacts has estimated the size of the additional financial support new Approved (fee cap) providers would have to provide as a part of access agreements. This then represents a transfer from HE providers to students from disadvantaged backgrounds. The table below shows the expected size of the benefit to students (equivalent to the cost to business in the previous section).



**Table 16. Financial benefit for students due to greater spread of Access Agreements**

	18/19	19/20	20/21	21/22	22/23	23/24	24/25	25/26	26/27	27/28
No. of “Approved (fee cap)” APs	0	41	47	54	61	69	77	85	92	99
<i>x £390 cost of AA financial support for students measures x 501 avg. students</i>										
Added cost of financial support (£m) <sup>40</sup>	£0.0	£8.1	£9.2	£10.5	£12.0	£13.6	£15.1	£16.6	£18.0	£19.4

106. In addition to the direct impact above, there will be economic and social benefits to greater number of students being able to enter HE as a result of this financial support. We do not try to quantify these effects.

### Providers moving to Approved (fee cap)

107. As explained in the “Impact on business” section, the creation of the “Approved (fee cap)” model will enable some providers to move to a model where they charge higher fees and provide courses that are eligible to attract student loan funding. This would then mean a higher cost for some students. However, as this is likely to be funded via student loans being available in the first instance, only a small proportion of this cost is likely to be incurred by students over the 10-year assessment period (as most of the repayment would occur at a later point).

108. The reformed system will be more competitive, with several regulatory barriers to competition removed. In a competitive sector, a provider can only increase their fees if students are still getting good value for money. Therefore, it is assumed that the impact of fee increases will be outweighed by a corresponding increase in teaching quality.

### Single entry gateway - Impact on taxpayers

109. As mentioned above, there would be a cost to taxpayers of providers in “Approved (fee cap)” category charging higher fees than previously. This cost would overall be equivalent to the benefit to business.

### Degree-Awarding Powers (DAPs) – Impact on business

110. DAPs are currently granted by the Privy Council following advice from the Secretary of State of Education. Currently, to apply for taught DAPs a provider

<sup>40</sup> For 19/20: 41 (APs in approved (fee cap) model) x £390 financial support per student x 501 average students = £8.1 million

must have at least four years' experience delivering HE programmes at least at an undergraduate level<sup>41</sup>. They are then scrutinised against a set of specific DAPs criteria covering governance and academic management, academic standards and quality assurance, scholarship and pedagogical effectiveness, and environment supporting the delivery of HE programmes.

111. Under the new system, the four-year track record will be reduced to three years. Providers who do not have a three-year track record will be able to apply for “Probationary DAPs”. Providers who meet the relevant tests for Probationary DAPs will be authorised with DAPs on a 3-year probationary basis. Providers would be able to gain Probationary DAPs for three years in parallel (or subsequent) to gaining Approved or Approved (fee cap) status. During the probationary period the providers will be subject to rigorous monitoring, only obtaining Probationary DAPs after final scrutiny. DAPs can now also be granted on a limited subject and/or limited level basis to enable easier access. All OfS DAPs authorisations will be renewable in the first instance. The OfS will have explicit powers to vary or revoke DAPs<sup>42</sup>.

112. A wider number of DAP options should encourage more providers to apply for DAPs who would have otherwise remained as validated. Providers will be able to get its own DAPs sooner because they can apply on a probationary basis and they only need a three-year track record to apply for full DAPs.

113. Based on our modelling assumptions, we forecast the numbers of new DAPs each academic year. We assume that 50% of providers will apply for full DAPs and the other 50% Probationary DAPs. It is difficult to judge what providers' behaviour will actually be.

**Table 17: The forecasted number of new providers with DAPs each academic year.**

	18/19	19/20	20/21	21/22	22/23	23/24	24/25	25/26	26/27	27/28
New APs that obtain DAPs	0	26	11	12	12	13	13	13	13	13
<i>Of which full DAPS</i>	0	13	5	6	6	7	7	7	7	7
<i>Of which Probationary DAPs</i>	0	13	5	6	6	7	7	7	7	7

Numbers do not sum due to rounding

114. The key benefit of this policy change is the reduction in the amount of time a provider needs to be in operation before they can award their own degrees. This

<sup>41</sup> For Foundation Degree Awarding Powers, the experience must be at least at level 5

<sup>42</sup> Further information on the new types of DAPs is set out in “Simplifying Access to the Market: Degree Awarding Powers & University Title”

amount of time would be reduced by 4 years for Probationary DAPs and 1 year for full DAPs.

115. Currently APs without DAPs operate in the HE sector by signing a validation agreement with an existing DAPs provider, which can be quite expensive and burdensome. Moving to DAPs helps the AP to compete with incumbent providers, as they would not be subject to the cost of validation. This would mostly constitute a transfer between providers in the sector, with incumbent income from the validation provider reduced and new providers facing a lower cost.
116. Survey evidence<sup>43</sup> estimates that the average payment for validation amounts to a minimum of £540 per student. Thus, the total validation cost for an average AP would be approximately £212,000 per annum<sup>44</sup>. This is a significant financial burden on new entrants, for comparison, the average operated profit for an AP is only £150,000<sup>45</sup>. However, reforms to the validation process should mean that the cost will reduce. Due to these reforms it is estimated that the average cost of validation will undergo a 50% reduction to £106,000 per annum.
117. Currently APs report significant difficulties finding a validation partner for new courses, or for renewing existing arrangements. For existing APs with designated courses, 200 hours of their academic staff time and 168 hours of their administrative staff's time is spent on finding a validation partner and finalising agreements<sup>46</sup>. This would amount to an annual cost of £8,100 per institution.
118. If a provider gains DAPs they would pay for validation for either one or four fewer years depending on if they apply for Probationary DAPs or full DAPs, respectively (relative to the counterfactual of gaining DAP after meeting the four-year track record requirement in the existing year).
119. Hence the total cost saving to an AP of not needing validation is estimated at £114,100 (£106,000+£8,100) per year. £106,000 of this is cost transfer from the validating provider to the AP so has a net impact of zero.
120. Table 18 below shows the estimated impact of change the process of granting DAPs. In 2019/20, incumbent firms will save £0.2m on administration costs and £2.7m in validation costs. This latter figure is income foregone to the incumbent validation institution, which means it is a cost transfer and has a zero net impact.

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<sup>43</sup> DfE survey of designated APs, unpublished

<sup>44</sup> Using BIS (2016) to estimate the average number of students per AP. 391 students per AP x £540 = ~£212,000.

<sup>45</sup> Based on the finance data for existing APs with specific course designation. Assumes that validated institutions without designation earn, on average, the same profit per each student enrolled as designated ones do (£380 per student).

<sup>46</sup> DfE survey of designated APs, unpublished

**Table 18: Cost savings due to changes to the process of granting Degree Awarding Powers**

	18/19	19/20	20/21	21/22	22/23	23/24	24/25	25/26	26/27	27/28
Cost savings (£m)	0	0.2	0.2	0.3	0.3	0.3	0.3	0.3	0.3	0.3
Cost transfer (£m)	0	2.7	2.5	3.1	3.8	3.2	3.3	3.4	3.5	3.5

## Degree-Awarding Powers (DAPs) – Impact on students

121. The changes to the process of awarding DAPs will mean putting all providers on a level playing field, with new providers not having to pay for validation agreements for as long as they had to previously, and having more freedom to launch new courses. This will help the sector to become more competitive, with new providers better able to compete and traditional HEIs and FECs having a greater incentive to improve their offer.
122. The expected impacts of improved competition are similar to those outlined in the designation section. Greater competition is likely to lead to improved value for money for students, more choice and innovation in the sector. However, we do not seek to monetise these benefits.

## Degree-Awarding Powers (DAPs) – Impact on taxpayers

123. Currently, Degree-Awarding Powers are awarded by the Privy Council, based on the review and advice from the Quality Assurance Agency. These costs are covered through application fees for DAPs, as mentioned above. In the new system, decisions about awarding DAPs will be made by the OfS (or a body it contracts to).

## University Title – Impact on business

### *Benefits*

124. The proposed changes to the eligibility criteria for University/University College Title mean that every provider with full Degree-Awarding Powers up to bachelor level is eligible to gain University Title if they have at least 55% of their students on HE courses. This change does not mean a direct cost on business – it will in effect mean that a greater number of providers are eligible for University Title.
125. **The removal of the requirement to apply separately for UT and meet its associated criteria** - For those HE providers who would have applied for University Title under the existing system, there will now be a cost saving, as a

separate, complex application process will largely be removed.<sup>47</sup> To estimate the number of providers who would have applied for UT or UCT without the reforms, the number of applications over the past 6 years (2010-2015) is used, with the rising trend assumed to continue (see Table 19 below). From 2019 onwards, the number of applications is then assumed to rise in line with the expected rise in the number of providers in the “Approved” (with or without fee cap) category under the new system.

**Table 17. Applications for University/University College Title 2010-2015** (*Forecast numbers are shown in italic.*)

2010	2011	2012	2013	2014	2015	2016	2017	2018
1	0	1	3	0	2	1.9	2.1	2.3

126. The application process currently involves considerable staff time in terms of putting together the evidence; as well as legal fees spent on verifying that the provider is compliant with requirements of good governance. The number of applications is currently very low, which means that it is difficult to get robust evidence on the costs that providers are facing. In consultation with the DFE policy team, one provider was chosen as a representative case – i.e. there were no major difficulties in the process, and they met the standard requirements of gaining University Title. The provider has estimated the cost to them in the range of £15,000-£20,000. The upper bound is chosen as a main estimate here, to account for the possibility of more complex/problematic applications.

**Table 18. Cost savings due to changes to University Title process**

	18/19	19/20	20/21	21/22	22/23	23/24	24/25	25/26	26/27	27/28
Counterfactual no. of new UT <sup>48</sup>	0	2.4	2.5	2.6	2.7	2.8	2.9	3.0	3.1	3.2
Direct cost saving	0	0.05	0.05	0.05	0.05	0.05	0.06	0.06	0.06	0.06

127. It is expected that in the new policy, the vast majority of providers with Full Degree-Awarding Powers would want to gain University Title – given that it will be easier to do so in the new system.

128. **Reputational/competitive advantages.** For the providers listed in the table above (those who would not apply for University Title previously), the gaining of

<sup>47</sup> In line with the removal of most of the additional criteria.

<sup>48</sup> Central estimates of the number of providers applying in a particular year can be a fractional number (e.g. 3.2). This reflects the uncertainty around numbers applying, with the cost saving representing our best central estimate at this point.

University Title should give rise to reputational advantages. While University Title does not give a specific practical advantage to an institution, it sends a message to prospective students that the institution is reliable and offers high-quality education. Enabling newer providers to gain University Title would thus mean they are perceived as more trustworthy/reputable, allowing them to compete with the incumbent providers. More equal competition with incumbent providers is likely to lead to a degree of redistribution of students across providers, as students find themselves more able to find a provider that better caters for their preferences, and so improve allocative efficiency within the sector.

129. An obvious potential source of estimates for the impacts of gaining UT is the performance of APs that have gained UT previously. However, there are only 2 APs that have gained University Title and have financial and student number data for after they have gained the title. The picture is mixed – one has experienced a large increase in student recruitment over the past 3 years, while for the other, student numbers have decreased slightly. Overall, this data does not seem sufficient to draw conclusions about the likely effects of the policy given the number of other factors that might influence student numbers at these institutions.

130. **Recruiting international students.** For similar reasons to those discussed above, it is expected that a provider gaining University Title will experience a competitive edge when looking to recruit international students and when looking to compete for national and international funding or grants.

### *Cost*

131. In contrast, some respondents to the Green Paper consultation felt that extending University Title to a greater number of providers runs the risk of diluting the value of English universities. They argue that longevity and stability is key to the reputation of a university and, and entry of new providers could affect the reputation of UK HE. However, it could be expected that the reputation of the English HE sector is built on excellent research and teaching, and the reforms are expected to drive improvements in the quality of teaching. Consistent and high quality standards will also be applied to all providers with Degree-Awarding Powers, ensuring that only providers with excellent track records can become universities. It is therefore not expected that the reforms of the UT process will have any negative impact on the reputation of the sector.

## **University Title – Impact on taxpayer**

132. Reviewing applications for University Title is currently a burden borne by government. HEFCE is responsible for reviewing the applications against the criteria, then providing briefing to DFE, which then passes its recommendation on to the Privy Council. In the new system, this burden will be removed.

## University Title – Impact on other groups

133. Given that UT has only reputational advantages for providers, no significant impact is expected on any other groups.

## Risk-based regulatory framework

134. The proposed regulation would introduce a duty for the Office for Students<sup>49</sup> to create and operate a risk-based regulatory framework. That means the detail of the framework, including the number of providers in each category and its specific measures, will be developed and introduced at a later point. This means we are not able to accurately assess the impact on providers at this stage.

135. The move to flexible, risk-based regulation means that there would be fewer “fixed” responsibilities for a provider, instead, the level of regulation will be flexibly adjusted over the years. This adds to the challenge of estimating the regulatory savings at this stage.

136. The majority of the impacts from the risk-based regulatory framework are picked up in the section of designation. Risk-based regulation will also enable Degree-Awarding Powers to be granted in parallel with entry at “Approved” or “Approved (fee cap)”, as providers would then be subject to risk-based monitoring. The proposal is that risk-based regulation underpins the whole system, which makes it difficult to disentangle the direct costs and benefits of this change from other changes, for example, designation.

137. Because of the reasons above, the impact of this regulatory change will be quantified in the impact assessments associated with the relevant secondary legislation. The following only describes a general picture of the expected impacts.

- a. **Fairer allocation of administrative burdens.** The burden of regulation would specifically fall on providers where increased monitoring would add value to the students, to safeguard the quality of England’s HE system.
- b. **Better management of high-risk providers.** In the new system, there would be a greater focus on riskier providers, giving the OfS with more levers to regulate them. Risks would also be revealed on a more continuous basis through monitoring rather than through, for example, 4-yearly reviews for Degree-Awarding Powers.

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<sup>49</sup> Assuming it is created – otherwise the duty would lie with HEFCE

## Specific impact tests and better regulation requirements

### Competition impact

138. The regulatory measures on course validation, designation for government funding, Degree-Awarding Powers and University Title covered within this impact assessment all have an explicit objective of improving competition in the sector. The expected impact of increased competition is reviewed within specific sections on each measure. As the impact is expected to be positive for all measures listed, an in-depth competition assessment is not required.

### Small firms impact

139. The proposals will harmonise regulatory systems for HEIs, FECs and APs, reducing the barriers to entry for new HE providers. This is expected to directly benefit APs, but could indirectly negatively affect the HEIs through removing their competitive advantages. Looking at the size distribution at existing providers it is clear that APs are, on average, much smaller than HEIs. The average number of students at an HEI is 14,000, compared to only 500<sup>50</sup> for APs with designated courses. This suggests that the majority of benefits listed in the impact assessment, will primarily affect APs.

140. **Estimating the number of employees.** Normally, small firms are defined as firms with fewer than 50 full-time equivalent employees. Based on the survey of APs, 72% of those who responded would be classed as small.

141. However, the number of staff is not necessarily a good indicator of the size of an HE provider. Depending on the circumstances, an AP could have the most teaching staff on temporary contracts, while another AP will have all the teaching staff as permanent employees. The number of students is an alternative indicator of the size of the provider. Using the research on APs<sup>51</sup>, there was on average 12.4 full-time equivalent students per one full-time equivalent member of staff. Then the equivalent cut-off for the number of students would be ~620 students per provider. Using the same research report, this would amount to 88% of APs.

142. Thus on both measures, the vast majority of existing APs would be classed as small firms. This means that the majority of benefits to business listed in this IA, averaging around £25 million a year, would go to small HE providers.

143. On the other hand, no publically-funded HEIs would be classed as small firms (HESA staff data 2015/16). They are the business most likely to experience an indirect negative impact from the measures, in the form of increased competition.

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<sup>50</sup> With a 117 median – meaning that majority of providers are much smaller than average.

<sup>51</sup> BIS (2016) “*Understanding the market of alternative providers of higher education and their students in 2014*”



<b>Title:</b> Information sharing and data transparency duty  <b>IA No:</b> BIS005(F)-HE  <b>RPC Reference No:</b> RPC-3337(1)-BIS  <b>Lead department or agency:</b> Department for Education  <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>
	<b>Date:</b> 11/12/17
	<b>Stage:</b> Enactment Stage
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Primary legislation
<b>Summary:</b> Intervention and Options	<b>RPC Opinion:</b> GREEN

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out	Business Impact Target Status
-£9.0m	-£9.7m	-£1.0		

**What is the problem under consideration? Why is government intervention necessary?**

- Higher Education Providers (HEPs) are currently required to send financial and other information to the Higher Education Funding Council for England (HEFCE) as a condition of receiving teaching grant funding. This information is vital to HEFCE's function of regulating the sector, ensuring institutional accountability and assurance. As the higher education landscape changes, legislation is required to ensure "Approved/Approved (fee cap)" providers<sup>1</sup> share information with the Office for Students (OfS).
- Widening participation in higher education is a priority for the Government. One factor inhibiting wider participation is the information asymmetries in the sector. Prospective students from backgrounds where higher education is the norm have an advantage in access to information. This means that students are not always informed of the likely impact of their decision to apply for certain courses at certain institutions. Separately, without access to full data, policymakers and researchers cannot fully understand the extent to which students from different backgrounds are successful in applying to their chosen institutions and subjects.

Government intervention is necessary to ensure information is made available to the OfS and to students, to ensure institutional accountability and inform student choice and confidence in the fairness of the system. Further data will also enable policy makers and researchers to understand better areas of underperformance relating to widening participation and develop more effective and value for money policy solutions.

**What are the policy objectives and the intended effects?**

- Ensure the OfS has access to the information necessary to regulate the sector**, ensuring value for money for the student and taxpayer
- Improve student choice**, making it easier to find the course that will fulfil their career aspirations
- Support the development of more effective, value for money, policies through access to more data and information.** The availability of higher education data will enable sector and institutional performance to be monitored, creating pressure on underperformers to improve and enabling policy makers, supported by the work of researchers, to develop more targeted and effective policies. This will be boosted by securely linking to other existing data.
- Increase participation in higher education for students from disadvantaged backgrounds and underrepresented backgrounds**

<sup>1</sup> Approved providers are those whose students are eligible for student and tuition fee support

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

**Option 0: Do nothing.** Retain the current arrangements for information provision.

**Option 1.** To introduce four measures that will tackle this information asymmetry:

- (1) requiring Higher Education Providers (HEPs) to legally provide information that is currently provided to HEFCE to the OfS,
- (2) providing information to students contained within the Key Information Set (KIS)
- (3) requiring admissions services, such as UCAS, to share data with Government and accredited researchers to support policy development
- (4) asking HEPs to publish offer and retention rates broken down by gender, ethnicity and disadvantage, and 'Approved' providers without Access Agreements to publish an Access statement alongside this information.

We had considered alternatives to regulation for these measures.

To achieve the objectives achieved by measures 1, 2 and 4 we considered a series of detailed voluntary agreements with providers. However, we identified a risk that some of the parties in question (possibly those with whom we have the greatest concerns) would not participate meaning students, the OfS, and Government would not be able to systematically and routinely collect the information required to deliver Government policy objectives thereby undermining policy intent.

For objective 3, UCAS's original preference was to only (securely) share data for applicants who have explicitly "opted in". The Government consulted on the case for going further through legislation. UCAS had already previously signalled a willingness to go further and share more data with researchers, and only certain data with policy makers. However, given the public policy importance of this data, the Government believes that legislation is necessary to secure the future supply of this data to both researchers and policy makers.

**Will the policy be reviewed? It will be reviewed. If applicable, set review date: 2020/21**

Does implementation go beyond minimum EU requirements?		N/A			
Are any of these organisations in scope?	<b>Micro</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes	
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)		<b>Traded:</b>		<b>Non-traded:</b>	

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible  
Minister:



Date  
: 11/12/17

# Summary: Analysis & Evidence

# Policy Option 1

Description: Information sharing and data transparency duties

## FULL ECONOMIC ASSESSMENT

Price Base Year 2017	PV Base Year 2018	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -6.6	High: -11.8	Best Estimate: -9.0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low		0.8	6.8
High		1.8	15.2
Best Estimate		1.2	10.4

### Description and scale of key monetised costs by 'main affected groups'

**Business:** Loss in UCAS revenue from data sales as data would be provided free to Government and accredited researchers. Some providers will face publishing costs and costs relating to the Widening Participation Statement, and from publishing information relating to the Transparency Duty. Increased operation costs of the OfS for measuring student transfers which will be passed on to providers (and also Government).

**Government:** costs for data cleaning, processing and handling data requests from accredited researchers

### Other key non-monetised costs by 'main affected groups'

N/A

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low		0.0	0.2
High		0.4	3.4
Best Estimate		0.2	1.4

### Description and scale of key monetised benefits by 'main affected groups'

**Business:** Savings to providers and research organisations as they would no longer have to pay UCAS for access to certain data

**Government:** Savings as a result of no longer having to pay UCAS for access to certain data

### Other key non-monetised benefits by 'main affected groups'

**Students:** Greater information will enable students to identify and select the courses and institutions that best fit their aspirations. This should help support better outcomes and lead to lower dropout rates. There are particular benefits to disadvantaged students and other underrepresented groups as information asymmetries are reduced and the Transparency Duty highlights institutions that could do more in terms of widening participation, spurring them into further action, alongside the publication of an Access statement. There will also be a benefit from a well regulated HE sector as OfS has the confidence it will be able to obtain information required to fulfil its objectives.

**Taxpayers:** Assurance that information needed to regulate the sector and support wider policy objectives can be obtained going forward. Potential gains if more students attend courses that enable them to fulfil their potential, leading to increased loan repayments and benefits to the economy. Lower dropout rates should mean students are more likely to repay their student loan debt.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

- The loss to UCAS from data sales which is difficult to accurately forecast
- Uncertainty regarding UCAS response to potential lost income from data sales, either passing on via charges to institutions or students.
- Demand for access to data from researchers is higher than anticipated, resulting in greater processing costs to Government or to any intermediary which may disperse this data on Government's behalf
- Assumptions around the number and type of providers in the future and the number of students studying at these institutions

## BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: 1.1	Benefits: 0.1	Net: -1.0	

## **Problem under consideration**

### **Information from institutions is needed to regulate the sector under the new higher education landscape.**

1. Institutions are currently required to send financial and other information to HEFCE as a condition of receiving teaching grant funding. This information is vital to regulating the sector, ensuring institutional accountability and assurance, and for the Government and HEFCE, to be aware of potential risks in the sector. Without legislation there would be no formal legal requirement for approved providers who do not receive grant funding to provide information to the new regulator, the Office for Students.

### **Information asymmetries are a key market failure in higher education.**

2. Imperfect information can result in students applying to institutions and courses that do not best suit their needs. If there is no clear information about the outcomes of entering different HE courses, applicants will not make the most effective course choices. Evidence suggests that currently students may not have the information available to choose the courses and institutions that will result in the best outcomes for them<sup>53</sup>. Improved data can also lead to better policy making and can create incentives for institutions to improve outcomes for students.

### **There is an under-representation of students from disadvantaged backgrounds<sup>54</sup> in higher education.**

3. According to UCAS, for the academic year 2016/17, there has been a record entry rate by young people from disadvantaged backgrounds of 19.5%<sup>55</sup>. However, there is still more to do: the entry rate of young people from the most advantaged backgrounds is more than 2.4 times that of the most disadvantaged.
4. The Government has set a challenging goal in this area; setting out an ambition to double the proportion of people from disadvantaged backgrounds entering higher education by 2020 relative to 2009 levels<sup>56</sup>. This would mean raising the

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<sup>53</sup> HEPI academic experience survey 2015 [http://www.hepi.ac.uk/wp-content/uploads/2015/06/AS-PRINTED-HEA\\_HEPI\\_report\\_print4.pdf](http://www.hepi.ac.uk/wp-content/uploads/2015/06/AS-PRINTED-HEA_HEPI_report_print4.pdf)

<sup>54</sup> Defined by POLAR (Participation of Local Areas), as a measure of educational disadvantage relating to Higher Education

<sup>55</sup> UCAS (2016) End of Cycle Report: UCAS Analysis and Research <https://www.ucas.com/file/86541/download?token=PQnaA15f>

<sup>56</sup> Speech by Jo Johnson, Minister for Universities and Science, 2015) <https://www.gov.uk/government/speeches/higher-education-fulfilling-our-potential>

participation rate of disadvantaged young people from 13.6% in 2009, to 27.2% in 2020.

5. The Government has also set a goal of increasing the number of Black and Minority Ethnic students in higher education by 20% by 2020. Variable outcomes exist for certain ethnic groups, particularly at the most selective institutions. Publishing data on application rates, offer rates and outcomes will aid students in choosing between HE providers and will increase pressure on HEPs to improve their performance on widening participation.

## Rationale for intervention

### To make high quality data and information clearer and more readily available

6. It is important that Government intervenes to improve information provision in the higher education sector for four main reasons:
  - To ensure financial data and wider information such as institutional risks are available to the Office for Students (OfS) so that they can monitor and regulate approved providers effectively, thereby ensuring value for money for the taxpayer and the student.
  - To ensure that prospective students have access to all the relevant and necessary information they require to make an informed decision as to which course and institution to attend. The decision to enter higher education is an important one – although students do face costs, obtaining a degree has a significant impact on future earnings. But the returns vary for individuals, by course and the provider a student chooses. Key Information Sets<sup>57</sup> (KIS) are an important part of providing information to students, and there is a need to ensure the OfS has sufficient power to require providers to provide this under the new landscape.
  - Institution-level information on participation and outcomes will make students aware of the likelihood of successfully applying for and then completing a course of study at that institution, aiding their decision making. Equally, through greater transparency, institutions will act to ensure they have a representative student body.
  - The reasons for underrepresentation are not always fully understood. Access to good data is important in addressing this, but currently UCAS, who collect information as part of the application and offer-making process, do not provide

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<sup>57</sup> <https://unistats.direct.gov.uk/find-out-more/key-information-set>

access to individual level data routinely. The Social Mobility and Child Poverty Commission's report '*Data and public policy: trying to make social progress blindfolded*'<sup>58</sup> highlighted the importance of UCAS data to researching the transition from school to university in order to understand the drivers supporting social mobility.

## To widen access and improve social mobility

7. Greater public awareness of admission and offer-making information by institutions will enable better measuring and comparison of institutional progress in widening access. Institutions where disadvantaged and underrepresented students are low will be highlighted, incentivising them to make further progress in widening participation.
8. Requiring approved providers who do not produce Access Agreements to publish an Access statement, outlining their objectives and approach, will help to commit these providers to outreach activity and increase participation of students from disadvantaged and underrepresented backgrounds.

## Policy Objective

9. The policies are intended to lead to the following benefits for the taxpayer and students:
  - **Ensure the OfS can be confident of the sector's sustainability and is providing value for money**, thereby benefiting students and the taxpayer;
  - **Increase participation in higher education for students from disadvantaged backgrounds** and from black and minority ethnic backgrounds – making progress towards the goals set by the Prime Minister;
  - **Improve student choices**, making it easier to find the course that will fulfil their career aspirations, potentially reducing student dropout rates;
  - **Support the development of more effective, value for money, policies.** The availability of higher education data will enable sector and institutional performance to be monitored, placing greater pressure on underperformers to improve and enabling policymakers, supported by the work of researchers, to develop more targeted and effective value for money policies. This will be boosted by securely linking data to other existing datasets.

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<sup>58</sup> University College London (2015) 'Data and public policy: trying to make social progress': A report for the Social Mobility and Child Poverty Commission <https://www.gov.uk/government/publications/data-and-public-policy-trying-to-make-social-progress-blindfolded>

## Information that is currently provided

10. Publicly funded Higher Education Providers (those in receipt of grant funding from Government) are required to provide financial sustainability and costing data<sup>59</sup>, as well as Key Information Set (KIS) data as part of the Memorandum of Assurance and Accountability between HEFCE (Higher Education Funding Council for England) and grant-funded institutions as 'it is a condition of funding that institutions supply data requested by HEFCE'. In addition, providers that do not receive grant-funding (currently called Alternative Providers) provide similar information as part of the process for having their courses designated for student support funding. For the 2016/17 academic year KIS data will also be provided across all their courses. This requirement ensures parity with the HEFCE funded sector.
11. KIS provides comparable course level information on around 37,000 UK higher education courses. Institutions provide information (based on HEFCE research on the most useful information to prospective students) on their websites and this is then linked through to a central website (Unistats) which enables the information to be compared. Examples of information that is published are as follows:
- Student satisfaction responses from the National Student Survey (NSS);
  - Student destinations on finishing their course from the Destination of Leavers from Higher Education (DLHE) survey;
  - How the course is taught and study patterns;
  - How the course is assessed;
  - Course accreditation by professional bodies; and
  - Course costs (such as tuition fees and accommodation).
12. The proposal to introduce a Transparency Duty will build on current information provisions, requiring providers to release and publish information on students who apply, receive offers, and accept as well as non-continuers and attainment by gender, ethnicity and social background at institution level. Whilst admissions data may already be published by individual institutions, the data is not consistently broken down by student background or in a way that is comparable.

## Description of options considered

13. The options under consideration are:

**Option 0: Do nothing.** There is no Information Sharing or Transparency or Duty.

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<sup>59</sup> Financial data which providers are required to provide under the Memorandum include information on the institution's expenditure, income, borrowing, cash flow and reserves.

Without legislation, government will no longer have the ability or levers to require 'Approved providers to make this information available to prospective students and Government. The OfS, once created, would not have the ability to require this information other than on a voluntary basis or as a condition of teaching grant (which would only be for those institutions which qualify for it). By "doing nothing" we would lose our levers to direct 'Approved' providers to provide the required information.

Therefore, in order to achieve the above objectives, it would be necessary to rely on voluntary agreements with Approved providers in order to gather and publish the information we are seeking. In addition, a voluntary agreement with UCAS would be required committing them to share individual level data with Government and accredited researchers (and we would need to be confident that this would be a permanent prospect).

**Option 1: Introduce legislation in three areas – the preferred option:**

- 1) Legally require all the 'Approved' providers to share financial and other necessary information with the newly created Office for Students (OfS);
- 2) Require 'Approved' providers to publish information in the form of Key Information Sets (KIS) as a condition of registration;
- 3) Require bodies providing shared admissions services, e.g. UCAS, to provide relevant application data, where it is needed;
- 4) Introduce a Transparency Duty for providers to publish an ethnic, gender and student background breakdown in every year of their intake, including application, offer, acceptance, completion and attainment levels.
- 5) Require 'Approved' providers without Access Agreements to publish Access statements.

## **Analysis of Option 0: Do nothing**

14. This option would be inconsistent with the new architecture being created and the intention to create a level playing field for providers. It does not legally ensure financial and other necessary information to regulate the sector is available to the OfS, nor consistent and comparable information is available to students through the Key Information Sets.

15. Doing nothing would mean there would be no assurance that full UCAS data would be available to researchers and Government analysts to analyse and further understand the barriers to social mobility.

16. Without the Transparency Duty, which aims to highlight institutions which could do more in widening participation, institutions may be less incentivised to undertake



further outreach activity and improve their performance in ensuring a diverse student intake.

17. We would lack levers to nudge 'Approved' providers into improving access to HE if they were not required to make the application and attainment level data transparent. There is a risk that some existing providers with access agreements could switch from the 'Approved (Fee Cap)' model to the 'Approved' model, and hence absolve themselves of any public commitment on widening access.

18. In order to achieve the above policy objectives without legislation it would be necessary to rely on:

- Voluntary agreements with HE providers to supply the necessary financial information required by the OfS to regulate the sector and information from students
- Voluntary agreements with individual providers will be required to ensure information contained within the Transparency Duty and the Access statement (for Approved providers without Access Agreements) is published.

19. There is a risk that some providers may choose not to participate in voluntary agreements, for example, if they felt that the benefits of these arrangements would not outweigh the costs of doing so. As a result, students, the OfS, and Government would not be able to systematically and routinely collect the information required to deliver Government policy objectives as individual organisations could opt out of the agreement thereby undermining policy intent.

20. Government had also discussed with UCAS a voluntary approach to sharing data from all applicants seeking to enter higher education following UCAS' recent decision to restrict access to only those applicants who have explicitly "opted in" to make their information available. This would lead to smaller, possibly unrepresentative, samples of data, impacting on government's ability to devise effective policy to widen access to higher education and increase social mobility.

21. UCAS is taking steps to make more of this data (but not all) available to researchers and the Government. However, legislation is still needed to ensure all of the data needed by researchers and policymakers is always available and that the access to this important data is independent of the UCAS policy

### *Costs*

22. There will be no additional costs to institutions.

23. However, Government and students (particularly those from disadvantaged backgrounds) may lose out if:

- The way the sector is funded in the future changes, and financial and KIS data is no longer available to regulate the sector which helps to ensure value for money and informs student decision making;
- Difficulties remain in researchers and policymakers obtaining access to data to develop the evidence and effective widening participation policies;
- Information asymmetries remain, with potential students making sub-optimal decisions which result in a cost to them and for the exchequer which provides student support; and
- Institutions do not carry out outreach activity because they have not been spurred to do so through the Transparency Duty or through the publication of an Access statement for Approved providers without Access Agreements.
- The OfS may not voluntarily promote the awareness of student transfers. This means those students who would benefit from being able to transfer may not take advantage of this opportunity because their lack of awareness.

24. We are unable to quantify the potential costs of a voluntary agreement given the uncertainties around the proportion of providers who would likely agree to sign up to voluntary agreements.

### *Benefits*

25. There will be no additional benefits to institutions where there are no voluntary agreements in place.

26. For institutions that agree to provide data relating to the Transparency Duty and produce an Access statement (where relevant), students will have access to information that will help inform their decision making. This will benefit them as more informed students are less likely to drop out during the course of their study. Published application data will also mean that providers that could do more to improve access to HE would be highlighted, spurring them into further progress. The policy objectives will only be realised if agreements with a significant number, if not all providers are made.

27. If further UCAS data is voluntarily provided, government and researchers would benefit (they would no longer have to pay for access to some of this data) and students would benefit from more effective widening participation policies as a result of improvements to the evidence base. These benefits are explained further in Option 1 below.

28. We are unable to quantify the benefits of a voluntary agreement given the uncertainties around the proportion of providers that would agree to sign up to voluntary agreements and the uncertainties around what data will be provided by UCAS under a voluntary agreement. We conclude that the policy objectives will not be met with voluntary agreements.

## **Analysis of Option 1: Implement legislation**

29. Marginal benefits are calculated for all Higher Education Providers over 10 years starting in 2018. This is the standard timeframe for government policy impact assessments

### **Policy measure 1: Implement legislation requiring Higher Education Providers (HEPs) to provide financial and student information**

30. Without legislation, under the proposed higher education landscape there will currently be no legal requirement on Higher Education Providers (HEPs) to provide financial and student information. The current Memorandum of Assurance and Accountability between HEFCE and grant-funded institutions confirms that “it is a condition of funding that institutions supply data requested by HEFCE”. The requirement also extends to Designated Alternative Providers (who are not in receipt of grant funding).
31. Data requested from HEFCE includes financial and accounting information to ensure regulation of the sector and the safeguarding of public funds. In addition, providers that do not receive grant-funding, will be required to provide Key Information Set (KIS) data as part of their process for having courses designated for student support funding, for the 2016/17 academic year across all their courses.
32. Implementing legislation will mean that the OfS will require all approved Higher Education Providers to provide the necessary data requested by OfS to carry out its duties, and require the publishing of information to support informed student decision making through the KIS.
33. The details of the information that the OfS will require and the information that should be provided to students will be set out in guidance to the sector and not in legislation. It is anticipated that HE providers will continue to be required to provide broadly the same information that is currently provided. Therefore, it is not expected that legislation will lead to an increase in burdens to any party. Flexibility will, however, be retained to enable the detail of this requirement to be adjusted if, for example, this is needed to support OfS functions, to improve the information provided to students or different data sources emerge.

## Costs

### *Business*

34. Legislating to require all Higher Education Providers to provide financial and KIS data to the OfS should not result in any additional burdens on institutions as a result of the policy compared to the 'do nothing' scenario. Under the current system, all Alternative Providers (APs) with access to student support and all grant funded providers (HEIs) currently provide this data (APs are due to provide KIS data by 2016/17). Legislation will provide assurance that this information will continue to be provided.

### *Students/Government*

35. There will be no additional costs to students/Government.

## Benefits

### *Students*

36. For the specific proposal of implementing legislation to require HEPs to provide student information there will be no significant additional benefit to students compared to existing arrangements, as this information is currently provided under the Memorandum of Assurance and Accountability. The legislation will, however, provide assurance within the new HE sector landscape that institutions will continue to provide the OfS and students with the necessary information to ensure regulation of the sector and inform student decision making.

### *Government*

37. Legislating the requirement will clearly define the expectations on HEPs regarding information provision. It is in the government's interest to have certainty that financial data which will help ensure the safe-guarding of public funds and KIS data will be available in the future. KIS information will also be available to government to inform decisions of how to support disadvantaged students and encourage them to enter higher education. It is not possible to monetise the benefit.

## **Policy measure 2: Enable the OfS to require bodies providing an admissions service connected with the provision of higher education e.g. UCAS to provide relevant data, where it is needed**

38. UCAS is an independent charity owned by the HE sector which provides information, advice, and admissions/applications services to facilitate educational progression. UCAS receives no direct public funding; it is financed by student application fees, institutional membership fees and revenue from its commercial activities. UCAS is

governed by a Board of Trustees, the majority of whom are leaders of higher or further education providers.

39. UCAS carries out an important public function by delivering an admissions service on behalf of Higher Education Providers. Existing legislation does not require UCAS to make individual-level data available to Government.
40. New legislation will require UCAS to share individual-level data at the end of each higher education application cycle. This data will be shared, held and used securely by OfS and Government analysts. It will also be made available to researchers through appropriate intermediaries such as the Administrative Data Research Network (ADRN), to enable accredited researchers to securely access the data where their work is in the public interest. However, as is currently the case, institutions/bodies will have to request and continue to pay UCAS for application data as it comes in during the higher education application cycle if they would like to know the progress of applications throughout the year.
41. For the purpose of this impact assessment we assume that UCAS will provide a portion of the data voluntarily (our best estimate is that 50% of this data will be provided voluntarily), with legislation ensuring the remaining data is provided. The legislation will also ensure that the access to data is ensured irrespective of future changes of UCAS policy.

## Costs

### *Business – UCAS*

42. In order to calculate the costs to UCAS, we first look at their current revenues, and try to estimate how much of this will be lost as a result of making their end of cycle data free of charge. Directors' Report and Consolidated Accounts for the year ended 31 July 2016 <sup>60</sup> demonstrates UCAS' incoming revenue streams as follows:

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<sup>60</sup> [https://www.ucas.com/sites/default/files/ucas\\_consolidated-signed\\_accounts.pdf](https://www.ucas.com/sites/default/files/ucas_consolidated-signed_accounts.pdf). Pg. 25

**Figure 1: UCAS Incoming Resources**

	2016	2015
	£	£
<b>Institutional and applicant fees</b>		
Provider fees	10,727,414	10,673,006
Applicant fees	13,863,671	13,652,054
	<u>24,591,085</u>	<u>24,325,060</u>
<b>Other income</b>		
Data services sales	263,562	78,429
Licences sales	398,673	-
Supporting Professionalism in Admissions	33,534	122,807
Brand and data charge	4,004,061	3,886,544
Management and resourcing recharge	2,187,032	2,009,732
Fraud grant	67,000	67,000
Other income	105,229	147,408
Recharge	-	(46,559)
	<u>7,059,091</u>	<u>6,265,361</u>
Investment income	183,197	171,869
	<u>31,833,373</u>	<u>30,762,290</u>
<b>Charity income excluding gift aid</b>		
<b>Trading operations</b>		
UCAS Media Limited	16,780,098	16,002,840
Investment income	8,720	2,759
	<u>16,788,818</u>	<u>16,005,599</u>
Intercompany	(6,239,572)	(5,943,846)
<b>Group income</b>	<u>42,382,619</u>	<u>40,824,043</u>

43. In their response to the Green Paper proposals, UCAS identify the following areas of policy impact that could affect their revenues.

#### *Applicant Fee Income*

44. In its response to the Green Paper, UCAS set out its concerns that sharing applicant data could put some prospective students off making an application. 8% of respondents to their survey said that they would consider not applying to higher education at all, if UCAS were to share their data without their consent<sup>61</sup>. The Government does not, however, believe that this policy will have a net negative impact on applications to university.

45. The Government takes data security very seriously and will take steps to ensure that this data is used securely by all parties, which will be explained to UCAS applicants. The Government provides secure access to researchers to other datasets which hold individual level data, such as the National Pupil Database, which contains detailed data on pupils in schools and colleges. Access to this data is subject to strict conditions, requiring researchers and organisations to have appropriate data

<sup>61</sup> <https://www.ucas.com/corporate/news-and-key-documents/news/37000-students-respond-ucas%E2%80%99-applicant-data-survey>

security procedures in place. The Government takes the view that making this data available to accredited researchers could actually improve confidence for students entering higher education, and could therefore result in an increase in participation.

46. For the purposes of this analysis we therefore assume that this policy has a neutral impact on student participation.

*Loss in revenue for data and bespoke analysis*

47. The areas that relate most to a revenue loss in bespoke analysis and in data sales in Table 1 are ‘data sales’ and ‘data and brand charge’. We believe that there will be a small proportion of income lost in these areas, as although data for the end of the cycle will be published, other parties may still be interested in data during the cycle, in order to keep track with applications as they occur. Furthermore, institutions are still likely to request bespoke analysis, as UCAS analysts will be more experienced with the data and have the opportunity to provide ‘value-added’ analytical services.

48. Revenue from data sales increased between 2015 and 2016. Revenue from both data and brand charges has varied over recent years. Data sales in 2016 were £263,562, while data and brand charges were £4,004,061, both figures were highest over the past 6 years of available accounts. For forecasting purposes, we assume that revenue from both data sales and data and brand charges do not increase in real terms.

49. In the absence of any forecast data, we assume UCAS experience a combined revenue loss in ‘data sales’ and ‘data and brand charge’ of between 2.5% - 12.5%, with a best estimate of 7.5% per year as a result of making more data available to researchers, government and institutions. This equates to a revenue loss in Year 1 of between £0.11m and £0.53m with a best estimate of £0.32m.

50. However, some of this revenue loss would have occurred anyway due to the steps UCAS voluntarily planned to take providing more of the data. We assume, in a central scenario that UCAS would have provided 50% of the data voluntarily (with a low estimate of 25% and a high estimate of 75%). We apply these proportions to estimate the costs to UCAS as a result of the legislation. This is shown below:

**Table 2: Estimated revenue reductions as a result of the legislation (Year 1)**

	Low	High	Best
Assumed additional % data required as a result of legislation	25%	75%	50%
Reduction in UCAS revenue	£0.03m	£0.40m	£0.16m

51. It is important to note, however, that this only relates to revenues. It does not take account of any reduction in the costs that would otherwise be associated with generating these revenues.
52. As part of this requirement UCAS will need to prepare and transfer data to government. UCAS currently send unpublished data to Government and we assume the additional costs of sending the individual level dataset is not likely to be significant. As unpublished data is already shared with other organisations we do not assume familiarisation costs for UCAS.
53. In their response to the Green Paper, UCAS indicated that the loss in revenues is likely to be passed on to institutions or applicants through increased subscription fees.

### *Government*

54. The cost to Government is assumed to equal the set up costs of cleaning the data and de-identifying individual data so that it can be securely used by researchers. We do not assume the Government will face significant infrastructure costs relating to the receipt of data<sup>62</sup>.
55. Without current access to the data and information on the likelihood of potential demand as a result of the legislation it is difficult to provide a reliable estimate of the potential costs to Government.
56. Our central assumptions are based on analytical resource required to work with other, similar datasets. It is assumed that an initial resource cost of two experienced analysts is required in year 1, with on-going annual resource requirement of 2 analysts to process information requests from external researchers. In year 1, assuming 2 analysts on an annual salary of £51,500, uplifted for non-wage costs, the cost equates to approximately £125,000<sup>63</sup>. From year 2, assuming this requires 2 analysts on an annual salary of £32,000, this equates to an on-going cost of £75,000<sup>64</sup>. Given the significant uncertainties we assume a low scenario of £60,000 and £40,000 and a high scenario of £245,000 and £155,000<sup>65</sup> for one-off and ongoing costs respectively. These are set out in the table below. The exact costs will

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<sup>62</sup> The data file received from UCAS is likely to be smaller than student record data that Government receives from the Higher Education Statistical Agency (HESA), which is around 6GB.

<sup>63</sup> £51,500\*1.198 (uplift for non-wage costs) \*2 = £123,305

<sup>64</sup> £32,000\*1.198\*2=£76,152

<sup>65</sup> The low scenario assumes that only one analyst is required in Year 1 and following years. The high scenario assumes that up to 4 analysts are needed in Year 1 and subsequent years.



depend on the process of data transferring and access procedures for accredited researchers.

**Table 3: Costs to Government**

	Low	High	Best
One-off costs	£60,000	£245,000	£125,000
Ongoing costs	£40,000	£155,000	£80,000

## Benefits

### *Business*

57. Research organisations and institutions are likely to benefit from the policy as accredited researchers will be able to access data from Government. We do not know the proportion of current UCAS revenue that relates to data and analytical requests made by businesses (as opposed to Government). We therefore do not assume that all costs incurred by UCAS as a result of revenue losses from fewer data and bespoke analysis requests will directly translate as benefits to business.

58. Table 3 above showed UCAS' estimated loss of revenue

59. We estimate high and low estimates of how these revenue losses (£0.16m from Table 2) may translate into benefits to the business using two scenarios below:

- Scenario I (low): Currently, businesses request 25% of data or bespoke analysis from UCAS (low estimate) and will now be able to benefit from the anonymised data made publicly available
- Scenario II (high): Currently, businesses request 75% data and bespoke analysis from UCAS (high estimate) and will now be able to benefit from the anonymised data made publicly available. Equal weight is given to both scenarios to estimate the expected average annual benefit to business. The benefits associated with the two scenarios are shown in Table 4:

**Table 4: Benefit to institutions depending on scenario (Year 1)**

	<b>Low</b>	<b>High</b>	<b>Best</b>
Reduction in UCAS revenue	£0.03m	£0.40m	£0.16m
% share total data demand from business	25%	75%	50%
Savings to Business (share of UCAS revenue foregone)	£0.01m	£0.30m	£0.08m

60. We therefore estimate that, in Year 1, the benefit to business is between £0.01m and £0.30m with a best estimate of £0.08m. These figures reflect different assumptions around the proportion of data which would be provided by UCAS under a voluntary arrangement.

### *Students*

61. The provision of data will benefit students, as its main objective is to reduce information asymmetries in the sector; improving access to HE and improving social mobility as a result. If important data about students is available to the OfS and Government, they will be better able to identify the best ways to support students from disadvantaged backgrounds and encourage them to attend university. Therefore, prospective applicants/students from disadvantaged backgrounds who would have not normally attended university will benefit from the provision. In addition, as a result of this policy, students are likely to make better course choices and therefore less likely to drop out during their study. Although we expect these benefits to be significant, we do not know how many additional students from disadvantaged backgrounds will enter Higher Education and what the impact on retention would be as a result of the policy and are unable to quantify the benefit.

62. Furthermore, students will benefit in the long run as the evidence base will be rich enough to inform prospective students of how their outcomes, including employment, may change as a result of choosing one university over another. We do not have enough information at this stage to know the value of informing prospective students about their potential outcomes and consequently are not in a position to quantify this.

### *Government*

63. As with business, the extent to which Government benefits from depends on the proportion of data and bespoke analysis currently requested by Government. **It is estimated that the benefit in Year 1 to Government will be between £0.02m and £0.10m with a best estimate of £0.08m.**<sup>66</sup>

<sup>66</sup> These figures added with the savings to business equal the reduction in UCAS revenue in Table 4.

64. There is also expected to be a productivity gain to taxpayers. Through insight gleaned from this data Government can better design policy to improve outcomes for all groups, alongside more information being available to students. This would help them better understand how attending different institutions may affect their outcomes, leading students to attend courses that are most suitable to them, enabling them to fulfil their potential and become more productive graduates. This will increase the rate of loan repayments and lead to a more productive workforce and economy. We do not currently have enough data to quantify this.

### **Policy measure 3: Introduce a Transparency Duty for providers to information on levels of applications, offers, acceptances, completion and attainment rates broken down by gender ethnicity and socio-economic status, and socio-economic background in key subjects and for Approved providers without Access Agreements to publish an Access statement**

65. The purpose of this policy is to publish information to highlight institutions where improvements to higher education access for students from disadvantaged and underrepresented backgrounds could be made, incentivising further action. This specific proposal follows the emphasis made by the Green Paper on the value of data availability. This information will also be sent to the Office for Students to publish in a form that would be comparable to prospective students.

### **Information requested**

66. Information covered by the Transparency Duty such as, gender, socio-economic background, ethnicity is already available for some institutions (much of it public already). However, the information is not consistently available across all institutions and broken down according to student characteristics and stage of application.

### **Costs**

#### *Institutions*

67. This duty is expected to apply to all institutions whose students are in receipt of student support. This means that a wider set of institutions will have to provide and publish more data than they have had to in the past. Overall, however, we believe this would not add significant costs to the sector.

## *Publishing Costs*

68. The cost of publishing data on each provider website is assumed to be around £180 per provider per year<sup>67</sup> which equates to £91,000 in year 1<sup>68</sup>. The £180 estimate is based on costing information provided by DFE's publishing and IT team, and includes the cost of uploading and quality assuring the content.

## *Data Collection Costs*

69. Attainment and completion level data is currently supplied by all designated providers to the Higher Education Statistics Authority (HESA). A similar arrangement will be in place after the OfS is formed. Therefore, we expect no additional data collecting costs for the HE providers in scope of the duty.

70. We anticipate that institutions who recruit through UCAS (the vast majority of full-time undergraduate students are recruited through UCAS) will ask UCAS to send much of the information on application, offer acceptance and completion rates on their behalf to the Office for Students. We do not envisage there being significant data transfer costs to UCAS.

71. Some providers which do not currently recruit through UCAS will experience an additional increase in costs as a result of the duty. These institutions will face an increased reporting burden as they would need to report directly to the Office for Students. We assume that around one third of Approved Providers, and one third of current designated providers, use the UCAS admission system.<sup>69</sup>

72. Under the Duty, providers will be required to collect and publish data on applicants, and the number of applications provides a better estimate of the number of individuals that will be reported on. We estimate around 2.65 applications are made by each person accepted onto a course.<sup>70</sup> Assuming a reporting cost of £5 per student<sup>71</sup> we estimate affected approved providers are likely to face a reporting

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<sup>67</sup> Internal discussions with DFE's publishing and IT team suggest that 1 day of staff time will be required. Based on 1-day staff cost equivalent to an annual salary of £39,000. We assume web-hosting costs are unlikely to be significant and are absorbed by institutions.

<sup>68</sup> Estimated at 508 (total number of providers) \*180 in year 1. These are annual reoccurring costs which will increase in subsequent years as the number of providers increases. It is assumed that there is sensitivity of 33% around the central estimate due to the uncertainty, implying a lower and upper bound estimate of £55,000 and £1010,000.

<sup>69</sup> Based on internal analysis of UCAS and SLC data we assume around 17,500 designated Alternative Provider entrants do not apply through UCAS.

<sup>70</sup> This is based on internal analysis of UCAS application and acceptances data by type of provider.

<sup>71</sup> Assuming data entry for a single student record takes 15 minutes and is quality assured by 2 members of staff. The 15 minutes' estimate is based on the time needed to populate approximately 20 entries that will provide information on applications, offers, entrants and retention broken down by age, gender,

burden of around £400,000<sup>72</sup> in year 1, with a low estimate of £300,000 and high estimate of £500,000.<sup>73 74</sup>

### *Familiarisation Costs*

73. Providers are likely to face familiarisation costs in understanding the Transparency Duty and the information required. Based on the time needed for providers to familiarise themselves with previous data requirements, we assume each institution will need around a day to familiarise themselves with the information on what will be required. This equates to a familiarisation cost of £120,000 in year 1 (low estimate of £90,000, high estimate of £150,000).<sup>75</sup> We also acknowledge that UCAS will face familiarisation costs, and have assumed a higher familiarisation cost, double that of the average for each provider at £500 given their larger responsibilities of sending data on behalf of other institutions (£375 and £625 for low and high estimates).<sup>76</sup>
74. To estimate the IT and system familiarisation costs of providers that do not use UCAS we base our assumptions on a previous Impact Assessment that estimated the set-up costs for institutions to provide Key Information Set data to HEFCE.<sup>77</sup> The estimates were based on a pilot study by HEFCE with several institutions. In the absence of other evidence, we have assumed that the familiarisation costs in the Transparency Duty data requirement will be similar for each institution. Using this approach we estimate a familiarisation cost of £0.16m in year 1<sup>78</sup>. We believe that this is a conservative estimate as the set-up costs in the HEFCE pilot are also likely to include familiarisation with the guidance, which is covered elsewhere in our estimates.

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ethnicity and social background at institutional and subject level. Assumed administration staff costs of £8 per hour plus non-wage costs assumed at 19.8% (Year 1 =  $0.25 * 2 * (8 * 1.198)$ ).

<sup>72</sup> 81000 non-UCAS AP applications each with a reporting burden of £5. (£400,000 = £5 \* 80,100). Low estimate is 25% lower than our central estimate, with high estimate 25% higher than central estimate.

<sup>73</sup> Costs in future years are based on the growth in approved providers each recruiting the current average number of entrants from alternative providers that use UCAS.

<sup>74</sup> In our estimates we assume Further Education colleges without Access Agreements are large institutions and are therefore able to absorb the reporting burdens without significant additional costs.

<sup>75</sup> This is estimated as G7 wage costs for one day, including non-wage costs of 19.8%, multiplied by the number of existing providers (and subsequent provider growth in future years). Year 1 =  $(£51,500 / 52 / 5) * 1.198 * 508$  (the number of providers in scope of the duty). Low estimate is 25% lower than our central estimate, with high estimate 25% higher than central estimate.

<sup>76</sup> Low estimate is 25% lower than our central estimate, with high estimate 25% higher than central estimate.

<sup>77</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/32413/11-1050-impact-assessment-students-at-heart-of-system.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/32413/11-1050-impact-assessment-students-at-heart-of-system.pdf)

<sup>78</sup> Based on the previous IA, estimates of set-up costs are around £1,400 per institution. This is multiplied by the number of existing providers and to estimate familiarisation cost. Year 1 =  $1,400 * 112$ . Future year costs are lower as familiarisation costs are only for new providers entering the sector. (Year 2 costs approximately £23,000).

### *Total cost of the Transparency Duty*

75. The total cost to providers of the Transparency Duty, which includes a publishing, data collection, familiarisation and IT cost is show in the Table below. The total cost is £0.8m in Year 1.

**Table 5: The total cost of the Transparency Duty to providers**

	Y1	Y2	Y3	Y4	Y5	Y6	Y7	Y8	Y9	Y10
Data collection cost (£m)	£0.4	£0.5	£0.5	£0.6	£0.6	£0.7	£0.7	£0.8	£0.8	£0.9
Publication cost (£m)	£0.1	£0.1	£0.1	£0.1	£0.1	£0.1	£0.1	£0.1	£0.1	£0.1
Familiarisation cost (£m)	£0.1	£0.0	£0.0	£0.0	£0.0	£0.0	£0.0	£0.0	£0.0	£0.0
IT Cost (£m)	£0.2	£0.0	£0.0	£0.0	£0.0	£0.0	£0.0	£0.0	£0.0	£0.0
Total Cost (£m)	£0.8	£0.6	£0.6	£0.7	£0.8	£0.8	£0.9	£0.9	£1.0	£1.0

### *Access Statement costs*

76. Providers which are 'Approved' and do not currently have Access Agreements will also be required to publish a statement illustrating their commitment to improving access to HE for underrepresented groups. This requirement will be light-touch, requiring the provider to set out its widening participation recruitment policy including the approach and objectives. The statement is intended to outline providers' existing work on widening participation and is not intended to require providers to undertake significant additional commitments. The statement is deliberately open to institutional interpretation and will not be prescribed or challenged by Government. Based on our assessment of the number of Approved Providers in the new system, we assume around 279 providers are likely to be impacted by the requirement in year 1.

77. We estimate that the formulation of the statement will require around a total of 1.5 days of senior staff time, which will include drafting the statement and approving it internally. The costs are based on an Impact Assessment which placed Non-financial reporting requirements on businesses.<sup>79</sup> This Impact Assessment costs the time spent for drafting, amongst other requirements, a statement on diversity policy for management, to be included in the Annual report of a company. The cost was estimated to be on average around £283 for each business, and takes into account the different time required across Director, Senior managers and Junior staff. Across the companies surveyed, the total amount of time required to produce the annual

report equated roughly to around 13 hours (or 1.5 days of time) with middle managers providing the majority of the resource.

78. We take as a reasonable proxy for a middle manager's salary as the cost of a senior professional of an education establishment, which after allowing for non-wage costs amounts to around £480 staff time per institution. This leads to a total cost of approximately £130,000 in year 1. We assume a low and high estimate of £100,000 and £165,000 respectively.<sup>80</sup>

79. We do not assume additional familiarisation costs related to the Access statement beyond those included in providers understanding the requirements of the Transparency Duty, as the proposed statement is intended to be light-touch and not prescriptive.

### *Students*

80. There are not expected to be additional costs to students as a result of the duty.

### *Government*

81. Government is not expected to experience any additional burdens as a result of the policy.

## **Benefits**

### *Institutions*

82. Institutions may benefit through increased application rates as a result of the Transparency Duty. If disadvantaged prospective students see, as a result of the duty, that students similar to them have taken part in higher education, or attended certain institutions, it may incentivise them to apply to higher education too. Conversely, there may be an unintended consequence for individual institutions if the data shows that students from certain groups do not attend certain institutions or HE in general, potentially deterring students from those groups from applying to HE. Overall we expect the policy to lead to an increase in student participation (see below).

### *Students*

83. Greater public provision of admission information by institutions will enable measuring and comparing institutional progress in widening access. Institutions which have low representation of students from particular groups will be highlighted,

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<sup>80</sup> Number of affected providers multiplied by staff costs (£37.24 – hourly rate, with non-wage uplift and adjusted to 2017 prices) 13 hours (1.5 days) x 279). Low estimate is 25% lower than our central estimate, with high estimate 25% higher than central estimate.

incentivising them to make further progress leading to potential increases in higher education entrants from disadvantaged backgrounds.

84. All prospective students will benefit from having clearer and more information available to them about groups of students at certain institutions. It will allow students to make more informed choices about the most suitable institutions to attend. If students are more aware about how their decisions on institutions may affect their outcomes, the duty should lead to more students fulfilling their potential.

85. The publication of an Access statement from Approved providers without Access Agreements, alongside the Transparency Duty, will encourage further outreach activity, leading to an increase in participation from disadvantaged and underrepresented students. We do not have data to show how this will affect outcomes; therefore, we are not in a position to quantify this benefit.

### *Government*

86. Taxpayers may benefit indirectly from the Transparency Duty. If more students are at institutions that are the best match for them, then they are more likely to fulfil their potential in the labour market. This will lead to increased productivity and higher returns on taxpayers' loan outlays. We do not have enough data to quantify this.

## **Small and Micro Business Assessment**

87. 2015/16 HESA data shows that HEFCE funded Higher Education Institutions (HEIs) have on average 2,516 employees and that the smallest number of employees at a single HEI is 95. Analysis of the Further Education workforce data for England Report shows that the average FTE staff per college is 383 for England. Therefore, we do not believe any HEI or FEC to be classified as a small business for this assessment.

88. However, according to a DFE survey of Alternative Providers (APs) 95% (out of a sample of 160 APs) had 50 employees or fewer. The AP survey included all such providers, which in the new regulatory system would include many out of scope of the Student Protection Proposal, as they would choose to either be unregistered or registered (not approved). Therefore, these findings are unlikely to be representative of the APs in scope. However, as we do not hold further detail of the split between small business in or out of scope of the proposals, we assume that 95% of APs in scope of the proposal are classed as small. Our expectation is that this is an overestimate.

89. Data on the number of providers in the sector show that there are considerably more APs in the HE sector than HEIs and FECs. This suggests that there are a relatively large number of small businesses in the HE sector. However, although there are a



large number of APs, they only had approximately 12% of the total number of HE students in 2015/16.

90. For the information sharing and data transparency duties, we estimate that, proportionately, the burden on small institutions will be greater than for larger institutions but the incremental burden compared to current practice will be small.

**Table 6: Present Value total monetiseable costs and benefits for all policies (£m)**

<b>Monetised costs to business and government (PV)</b>	<b>Low</b>	<b>High</b>	<b>Best</b>
Loss UCAS revenue from data sales and analysis	£0.2m	£3.4m	£1.4m
Cost to APs of Transparency Duty	£4.1m	£6.8m	£5.4m
Publishing costs of Transparency Duty	£0.6m	£1.3m	£0.9m
Cost of Access statement	£1.1m	£1.8m	£1.4m
Provider familiarisation costs (understanding requirements)	£0.1m	£0.2m	£0.2m
UCAS familiarisation costs (understanding requirements)	£0.0m	£0.0m	£0.0m
Provider IT familiarisation costs	£0.3m	£0.4m	£0.3m
Government processing costs	£0.4m	£1.4m	£0.7m
<b>TOTAL COSTS</b>	<b>£6.8m</b>	<b>£15.2m</b>	<b>£10.4m</b>

**Table 7: Monetised benefits to business and government (PV)**

	<b>Low</b>	<b>High</b>	<b>Best</b>
Cost savings to business	£0.1m	£2.6m	£0.7m
Cost savings to government	£0.2m	£0.9m	£0.7m
<b>TOTAL BENEFITS</b>	<b>£0.2m</b>	<b>£3.4m</b>	<b>£1.4m</b>

<b>Title:</b> Student Protection in the event of course closure or provider exit  <b>IA No:</b> BIS010(F)-HE  <b>RPC Reference No:</b> RPC-BIS-3349(1)  <b>Lead department or agency:</b> Department for Education  <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>			
	<b>Date:</b> 11/12/17			
	<b>Stage:</b> Enactment			
	<b>Source of intervention:</b> Domestic			
	<b>Type of measure:</b> Primary legislation			
<b>Summary:</b> Intervention and Options				<b>RPC Opinion:</b> GREEN

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out	Business Impact Target Status
£-9.6m	£-9.6m	£1.0m	In scope	

**What is the problem under consideration? Why is government intervention necessary?**

In the event of a closure of higher education course, campus or provider there are some protections in place at present including Consumer Law, the Office of the Independent Adjudicator and voluntary sector led schemes. However, these routes can be burdensome and costly for the student and may not help students affected by closure to continue their study. Practice also varies from one provider to another. Government intervention is required to help ensure students are able to continue their studies in the event of course closure. This will be more important in the future as we enable more high quality new providers to enter the sector and increase student choice.

**What are the policy objectives and the intended effects?**

The policy intent is to protect the student when, through no fault of the student the provider is unable to fully deliver their course of study. Government is seeking for students affected by course closure to be able to continue their studies. We intend the Office for Students (OfS) to require, as a condition of registration with the OfS through the single gateway, approved providers to have in place a student protection plan. The plan should set out what arrangements the provider has for students in the event of a specified event, such as course, campus, department or institutional closures and/or de-designation for student support purposes or removal of tier 4 licences. The OfS will assess the plan to ensure it meets the requirement.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

- Option 0: "Do Nothing" – maintain the current position where there are no explicit expectations for a student protection plan in the event of course, campus or provider closure. Protection varies between providers.
- "Option 1" – introduce as a requirement of registration with the OfS a requirement for HE providers classified as 'approved' or 'approved (fee cap)' to have a student protection plan in place. The OfS will issue guidance on what they might expect the plan to cover and the OfS will assess whether they deem the plan satisfactory and likely to be carried out.

"Option 2" – as option 1 but the criteria for the protection plan are set by the OfS and are prescriptive about the protections that HE providers must offer. This option was discounted early in the policy appraisal process, the Government having had due regard to feedback from the Green Paper consultation process.

<b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> 2022				
Does implementation go beyond minimum EU requirements?			N/A	
Are any of these organisations in scope?			<b>Micro</b> Yes	<b>Small</b> Yes
			<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b>	<b>Non-traded:</b>

**I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.**

Signed by the responsible Minister:



Date: 11/12/17

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Student Protection in the event of course closure or provider exit

## FULL ECONOMIC ASSESSMENT

Price Base Year 2017	PV Base Year 2018	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -£9.3	High: -£10.2	Best Estimate: -£9.6

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low		1.0	9.3
High		1.2	10.2
Best Estimate		1.1	9.6

### Description and scale of key monetised costs by 'main affected groups'

HE providers will incur costs from introducing a student protection plan. Cost per provider estimated to be £11,720 with the one of costs estimated to have an NPV of £5.4m. On-going costs from ensuring the plan remains satisfactory and credible are estimated to have a NPV £4.2m. HEPs will have the autonomy to decide how they will support students who would be affected in the event of a course closure as long as the plan is assessed by the OfS as credible.

### Other key non-monetised costs by 'main affected groups'

HE providers face costs through informing the OfS of any planned closures; however, this will only affect providers that are affected by closure and will be a low burden approach. OfS will incur costs in producing and publishing the protection plan guidance and assessment of the plans. We are not able at this stage to monetise the costs to providers of implementing their plans in the unlikely event that this is required, only producing and publishing them. It is anticipated that plans will differ across providers according to their particular circumstances, the extent to which they have plans currently in plan and preferences over how to provide their students with assurance. This in turn will depend to a large degree on the detailed guidance drawn up by the OfS. As it would be wrong to pre-empt the decisions of the OfS in developing this guidance at this enabling stage an updated IA will be produced when detailed guidance is developed to include an assessment of implementation costs.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate			

### Description and scale of key monetised benefits by 'main affected groups'

It has not been possible to quantify or monetise the benefits for the main affected groups as the greatest benefits will only apply where there is a closure. There is uncertainty regarding the number of closures and at which level this could be (course, campus, provider). Therefore, we do not have a robust idea of the numbers or types of students that might be affected, therefore benefits have not been quantified or monetised.

### Other key non-monetised benefits by 'main affected groups'

Increased transparency for students on how they will be treated in the event of course closure. This can support their course choice and confidence in the provider and should save them financial and emotional distress in the event of closure compared to if a plan was not in place. HE providers will benefit from having a clearer process in place for how to deal with closures. Government may face reduced financial risk regarding losing public investment in HE providers.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
<p>The OfS will determine the guidance, assessment and frequency of any updates to the protection plans. These are yet to be determined and are an uncertainty in the analysis based on currently available information. Cost estimates should be seen as broadly indicative and will be updated once the OfS guidance has been established. The OfS guidance for the student protection plans are assumed to be based on the statement of good practice.</p>		

## BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: 1.0	Benefits: 0.0	Net: -1.0	

## Background

### Importance of competition

1. There are recognised benefits to increased competition. Competitive pressure in a sector drives the suppliers (HE providers in this case) to make their offer more attractive to the students, either through reducing prices, improving the offer or both. Improvements in technology mean that nowadays there is even more opportunity for innovation. Making the sector more open would therefore be expected to improve the value of education for students.
2. The CMA report<sup>81</sup> on higher education regulation has highlighted that “sector-wide regulations could create barriers to entry and exit, potentially protecting incumbent providers from competitive pressures and reducing the number of courses available to students”. It emphasised that “student choice and competition ... is likely to work best where the playing field, in terms of regulation, funding and information provision, is as level as possible”.
3. A more competitive sector could result in a greater number of providers, improved quality of teaching and increased diversity among providers. Removed regulatory barriers would mean that providers are better able to compete, thus increasing competitive pressure to improve quality and innovate.
4. More HE providers and a greater diversity between them would mean students have a better choice and are more able to pick a course that suits their needs. It would also mean that any increases in demand for higher education (e.g. as a result of widening participation measures) would be met. There are also wider economic benefits. Valero and Van Reenen (2016) find that “increases in university numbers significantly raise future GDP per person”. They have estimated that if there was one new university<sup>82</sup> added to each of the UK’s ten regions (as defined in the study), UK GDP would go up by 0.7%. Assuming that increase was the direct result of an increase in the number of providers, it would then have a £12.5 billion economic impact.

### Market Entry proposals

5. A key plank of the proposed HE reforms is the introduction of a single regulatory gateway, operated by a new regulatory body (the Office for Students), a new HE body that is due to be established in 2018, with a new regulatory framework that comes into force in the academic year 2019/20. The OfS is intended to have regulatory functions in relation to HE providers in England, which will help put

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<sup>81</sup> Competition and Market Authority (2015) “An effective regulatory framework for higher education”.

<sup>82</sup> Assuming the new universities have the same size distribution as the existing ones. It is likely that new providers would be significantly smaller than the incumbents.

different types of HE provider on a more level footing, align the regulatory systems different providers currently face and make it easier for new providers to enter the sector.

6. Following the introduction of a single gateway, providers will have three options for registration;
  - i. “Registered (basic)”: this will offer HE providers a chance to become officially recognised by the government, subject to providers’ qualifications meeting the Framework for Higher Education Qualifications (FHEQ), and subject to sign-up to the Office of the Independent Adjudicator (OIA).
7. All providers seeking designation for student funding would be able to choose between two operating models (the ability to switch between these models is at present heavily constrained):
  - ii. “Approved”: Similar to current system of specific course designation – up to a £6,000 tuition fee loan cap, with the current freedom to set fees at any level, and no requirement to sign up to an access agreement (but with a new policy statement on widening participation in HE).
  - iii. “Approved (fee cap)”: Up to a £9,000 tuition fee loan cap, up to a £9,000 cap on fees, a requirement to sign up to an access agreement if fees charged are more than £6,000, and eligibility for government grant. Providers that select to follow “Approved (fee cap)” will be subject to tighter funding conditions, commensurate with the higher level of public funding received.
8. The above tuition fee figures are subject to any uplifts available under the Teaching Excellence Framework.
9. The greater competition this and other changes will bring about will significantly benefit students, in the form of better value, more innovation and greater choice. But a natural feature of a dynamic sector is that while some providers flourish, helping the sector to grow overall, others find themselves less attractive to students and, in some cases, may need to close a course, programme, campus or ultimately need to exit the sector.

## **Problem under consideration**

10. Over the past two decades we have seen changes to the HE landscape including some growth in the number of providers in the sector and it is expected that the sector will continue to expand and evolve in the future. Greater competition will bring about significant benefits to students, in the form of better value, more innovation and greater choice. Under the planned reforms, we expect the number of students and institutions overall to grow.

11. But a natural feature of a dynamic sector is that while some providers flourish, helping the sector to grow overall, others find themselves less attractive to students. A likely consequence of improving competition, as it drives up standards and encourages greater responsiveness to the preferences of students and employers, is that some providers may need to close a course, programme, campus or ultimately exit the sector, more than we have historically seen.
12. Fundamentally the responsibility for handling a closure whether of a course, discipline, campus or even provider rests with the provider and, in some cases, with the validating or awarding body.
13. If we accept that as part of a diverse and innovative sector, providers may need to stop providing a particular course or activity then the focus for Government is to ensure students are adequately protected. Students should know upfront what support would be offered to them in such an event. The Government is also committed to upholding the reputation of the sector as well as minimising any impact on Government finances.
14. It is also important to recognise the important role of regulation in protecting students and ensuring the delivery of public policy goals for wider societal benefit; for example, in avoiding providers being incentivised to cut costs to the point that this endangers their finances or offer an inadequate standard of teaching. Regulation is necessary to ensure students are protected and the reputation of the sector is safeguarded.
15. There are many different reasons why a provider might decide to close a course. These include:
  - a. A decline of student interest in courses leading to unsustainable student numbers resulting in competitive / financial pressures
  - b. A strategic decision to close a course or campus
  - c. The removal of course or institutional designation (the ability to access the student finance regime)
  - d. The non-renewal of degree awarding powers or revocation of a provider's Tier 4 Sponsor Licence (the Home Office issued licence which allows a provider to teach International Students).
16. There are times when a closure will be planned, for example following a strategic business decision to close a course or campus, and this usually means an orderly exit with well-structured plans for how the course will close with minimal disruption for students. Provider closure is currently an infrequent occurrence.

Where providers have experienced significant changes in recent times (for example the recent announcement of the withdrawal of Heythrop College from the University of London), the change has often been planned and managed, and for most students that has meant being 'taught out'<sup>83</sup> and so they are able to complete their courses.

17. At other times the situation may be more immediate, like the revocation of a Tier 4 Sponsorship Licence (In August 2012, for example, London Metropolitan University had its Tier 4 sponsor licence revoked due to non-compliance with sponsorship requirements, meaning that c.2,700 international students at the provider had their visas put at risk). In this instance the plan for responding was reactive rather than pre-arranged. There have been a very small number of more disorderly exits at other institutions, arising for a range of reasons, resulting in greater disruption for students and potentially having a more significant negative impact on the reputation of the sector.

18. Whilst the likelihood of an immediate closure scenario is rare the potentially negative impact of such a situation would be high for students.

## **Rational for intervention**

19. The overarching policy in HE is to ensure all students that have the potential to benefit from going to University can do so. Any sort of Government intervention should not be about preventing closures but ensuring that closures are orderly and do not to create barriers for students to continue their studies.

20. It is important for Government to ensure any closures are orderly for three reasons:

- i. Government wants to ensure that students' interests are protected.
- ii. Government has a role in ensuring taxpayer's money is spent appropriately.
- iii. We have an HE sector with a strong international reputation that we want to be successful and competitive. Disorderly closure could impact on the sector's reputation.

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<sup>83</sup> Where providers decide to close a course or programme many 'teach-out' current students without taking on new students in order to minimise disruption for current students.

21. There are currently various mechanisms for student protections (some of which are voluntary) which already exist in the HE system:

- a. For all HE providers:
  - A voluntary sector agreed statement for good practice on handling course changes and closures
  - Consumer law may apply
  - The QAA Quality Code Part B; Indicator 3 – That providers operate a process to protect the academic interests of students when a programme is closed (although this is limited to the course/programme level)
  - ‘Good will’ within the sector where providers may be seen to have a duty to support their students in the event of a closure
- b. For HEPs that receive direct grant funding from the Higher Education Funding Council for England (HEFCE):
  - The Office of the Independent Adjudicator: from 1 September 2015 all Higher Education Providers with courses designated for student support funding were required to join the OIA scheme.
- c. For HEPs whose courses are validated<sup>84</sup> and do not receive grant funding from HECFE but who have access to the student funding system:
  - The OIA scheme as set out above;
  - The role set out in guidance for the validating body (Pearson’s for Higher National courses; bodies with Degree Awarding Powers for other courses) in continuity of provision;
  - Explicit provision being made for ‘teach-out<sup>85</sup>’ arrangements – however this has yet to be tested.

22. Some providers already have full course closure plans<sup>86</sup> and students have clear routes or arrangements to continue their studies in the event of a closure. However, the practice of having a plan is variable and also voluntary and so

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<sup>84</sup> 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”. Essentially, Alternative Providers without Degree Awarding Powers that want to offer degree courses must have courses approved/ validated by a provider that can award its own degrees. Degrees are awarded by the body with degree awarding powers, but taught by the Alternative provider.

<sup>85</sup> Wherever possible the course must continue until the last year of students have graduated; this is known as ‘teach out’.

<sup>86</sup> Oxford Brookes University provides a clear outline of their closure process online; <https://www.brookes.ac.uk/asa/apqo/quality-and-standards-handbook/programme-design-and-approval/programme-closure/>



some students continue to be exposed under the current system and may suffer considerable financial losses in the event of provider exit, including;

- a. Students may remain liable to repay tuition fee loans that the Student Loans Company (SLC) have already issued to providers on their behalf. This would be reviewed on a case by case basis but the final decision would depend on the nature of the failure and provisions being made by the institution. This creates uncertainty and stress for the students affected.
- b. Visa reapplication costs – International students whose sponsoring institution has their Tier 4 Licence revoked face having to reapply for their visa even if they manage to transfer to a suitable alternative course any OfS action in this area will need to be consistent with the Home Office Tier 4 regime and individual student requirements.

## Policy objective

23. The policy intent for these proposals is to protect the student when, through no fault of the student:
  - a. the provider decides or is unable to deliver the student's course of study due to, for example, course, programme, discipline, campus or provider closure; or
  - b. if the student can no longer attend due to removal of an institution's designation or Tier 4 license.
24. This policy aims to do this in a proportionate and risk based way which does not undermine student choice and competition, whilst minimising additional burdens on providers and does not create a barrier to entry to the HE sector.
25. In order to protect students from the impacts of any potential course closure we intend to;
  - a. Specify, on the face of legislation, that the OfS can require providers that register through the single gateway to have in place a student protection plan. The mechanism for achieving this will be via the conditions of registration that the OfS will impose on registered providers.
  - b. At this stage, we intend that conditions of registration relating to student protection plans should, as a matter of policy, only be applied to approved and approved (fee cap) providers who register via the single gateway. The OfS should issue guidance to providers on how to meet the condition. The plan should set out what arrangements the institution has, or will make, for students in the event of a specified event, such as course, campus, department or institutional closures and / or de-designation for student support purposes or removal of tier 4 licences. The plans should, at a

minimum, apply to institution students (new or existing) who are studying at level 4 or above and be easily accessible to those students. The plan should in the OfS' view be satisfactory and credible.

- c. Use changes to validation guidance and wider validation policy<sup>87</sup> to ensure there is clarity over how students are protected in the event of course closure under validation arrangements.
- d. Have providers notify the OfS of proposed closure of provision such as closure of a faculty, campus or provider level. This will allow the OfS to maintain visibility across the sector, help build an intelligence base and act as an early warning mechanism to understand whether and how students are being protected. We envisage that this is as a condition of registration under the regulatory gateway rather than a requirement that will be placed on the legislation.
- e. As part of the OfS duty to operate the gateway and register of providers, it should also keep list of name changes / historical providers, to enable those that might need to (e.g. employers) to verify genuine historical institutions. This would be to ensure graduates of providers no longer operating are able to demonstrate their qualifications are legitimate.

26. The policies we are proposing will lead to benefits for students: we expect there to be a more consistent approach across providers to student protection in the event of course closure. Table 1 shows the difference between the existing protections and the proposed protections.

**Table 1: Differences between existing and proposed protections**

Existing protections	Proposed protections
<ul style="list-style-type: none"> <li>• Voluntary (sector owned) Statement of Good Practice guidance on HE course changes and closures</li> <li>• Few institutions make known to their students what, if any, the student protection plan is.</li> <li>• Consumer and contract law.</li> </ul>	<ul style="list-style-type: none"> <li>• Consistent requirement for all approved and approved (fee cap) regulated providers to have in place a student protection plan.</li> <li>• Approved and approved (fee cap) regulated providers to make known to students, in an accessible way, what the student protection plan is.</li> <li>• Student protection plan to form part of the provider's terms and conditions / enrolment contract.</li> <li>• Consumer and contractual rights and obligations continue to apply.</li> </ul>

<sup>87</sup> As part of changes to the validation policy proposals the validation guidance will make it clearer that it should be explicit which provider is responsible for putting in place the student protection plan for students studying the validated course.

27. We are not proposing to set out in legislation detailed criteria of what a student protection plan (SPP) must contain. The OfS will set out in guidance broad requirements and expectations that the plan should reasonably cover – the intention will be for the guidance to be helpful and illustrative rather than prescriptive and it should not act as a barrier to entry into the sector. The OfS will be responsible for assessing the SPPs as part of the terms and conditions of OfS registration and will determine whether the plan is satisfactory and credible. The OfS may require some specific information in order to assess the plan and the guidance should also set out how the OfS intends to assess the plan.

28. The existing sector owned “Higher Education Course Changes and Closures: Statement of Good Practice<sup>88</sup>” provides an example of the sort of content the OfS may expect student protection plans to meet, and what it may wish to cover in its guidance.

29. We do not expect the OfS to be established until 2018 and therefore will need to develop, issue and publish, guidance ready for the when they start to operate. It is not possible to know with certainty what would be included in their student protection plan guidance. The analysis is based on the assumption that it will largely follow the Statement of Good Practice noted above. Key recommendations in the Statement of Good Practice are;

- Transparent, fair and accessible policies and practices governing course closure and changes. This mainly concerns ensuring terms and conditions are accessible in one place and set out in a way that is clearly understood by students.
- Ensuring students have clarity of options, timely notification and having clear arrangements for consulting with students when changes occur. This should include a clear process to ensure continuity of their studies and minimise any potential negative impacts on students affected by changes and closures.
- Ensuring providers set out the arrangements for continuity of provision for students in the event of the closure of a HE course. If ‘teaching out’ in the institution is not possible, HEPs should seek to offer alternative courses either within the institution, help students to transfer to other providers (including transfer of credits) or where these options are not possible refund all or part of the fees paid by the students.

30. The OfS will also have responsibility for assessing the SPPs and determining the frequency with which they should be updated. The assessment and frequency of updated to the plan will be proportionate based on provider risk, although the

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<sup>88</sup> <http://www.guildhe.ac.uk/wp-content/uploads/2015/11/Statement-of-good-practice-Nov15.pdf>

exact criteria remain uncertain at this stage as the OfS will not be set up until 2018.

31. Even with a rationale for Government intervention and a policy intent focussed on protecting the student, it should be a clear expectation of the HE sector that it is the responsibility of each provider to take complete care of their student, even in the event of a course closure.

## Analysis of Option 0: Do nothing

32. This option would mean there would not be an explicit requirement for providers to have a coherent, approved, student protection plan in place which lets their students know, and gives them confidence in, what the arrangements will be made if their course, campus or provider closed or if their providers tier 4 licence or designation for student support is removed. HE providers would also not be required to inform the OfS of any planned closure.
33. There will continue to be some protections that already exist in the system (set out in para 21 above) but these are not necessarily applied consistently across the sector, which may mean some students might be more exposed compared to others in the event of a course closure.
34. Students do have a number of avenues for recourse should a HE provider close a course/campus or exit, including;
  - The Office of the Independent Adjudicator (OIA) was set up to look at complaints that cannot be resolved between the HEP and the student. Students can approach the OIA in the first instance before going to the courts. The service is free of charge to students and can often consider complaints more quickly than the courts. From 1 September 2015 all Higher Education Providers with courses designated for student support funding were required to join the OIA scheme.
  - 'Good will' within the sector, wherein in practice most providers that find themselves in a course closure situation will want to assist their students and help them continue their studies e.g. by helping them to find another provider to attend. This may be with the help of others bodies (HEFCE, UCAS, DFE, Home Office etc.).
35. Validating bodies will also play a role in helping to take/place students. However, there is no actual *obligation* for providers to do this and is entirely down to

validation agreement between the two providers how students would be protected.

36. Consumer law may apply to the agreement between students and the HE provider, in which case students may be entitled to remedies contained in the Consumer Rights Act 2015, *including* a refund of fees.
37. Both the routes through the courts (Consumer Rights) and the OIA have the potential to be a drawn out process, though court action may be costly and involve a degree of risk which students may not be prepared to take. Both of these options are unlikely to prioritise supporting the student to continue their studies.
38. The Higher Education Course Changes and Closures: Statement of Good Practice will remain voluntary, which includes recommendations on continuity of study for students but, as this is on a voluntary basis, students would not be able rely on the HEP complying with this.

## Costs

39. We currently have limited information on Alternative Providers and therefore we only have a partial evidence base relating to the number of course, campus and provider closures from recent years across the whole HE sector.

### *Higher Education Providers*

40. In the do nothing option we would not expect there to be any additional direct costs to HEPs.
41. However, HEPs may face an indirect cost in the risks to the reputation of the wider HE sector. If provider's close courses in a disorderly manner this could discourage potential students from attending HE and potentially make the UK a less attractive prospect to international students which could have large financial implications for HEPs that have a high proportion of international students.

### *Students*

42. In the do nothing option there would continue to be inconsistent coverage of student protection in the event of course, campus or provider closures with no clarity on how they will be protected. Students;
  - May be liable to repay tuition fee loans for payments that the SLC have already issued to providers, even if they cannot complete the course. This would depend on the circumstances of the closure and individual and would need to be reviewed on a case by case basis.

- In the case of international students whose sponsoring HEP has had their Tier 4 licence revoked are likely to face visa application costs associated with having to reapply. It currently costs £335 to apply for a UK student visa<sup>89</sup>, we assume international students would incur the same cost if required to reapply due to their provider having their Tier 4 licence revoked.
- May be unable to complete their course at their provider, or be unable to transfer to another provider. This could mean having to re-start their course potentially losing any credit for education already completed<sup>90</sup>. Students may not be able to complete their current modules or year resulting in an ill-defined break point in their students. Even if they can transfer to an alternative HEP, the course content may not be compatible.
- May be forced to relocate to continue their studies at an alternative provider. This may be a major inconvenience, potentially moving them away from friends and family, and from a location which could have been a major influence behind their decision to study at that institution.
- May face considerable stress and uncertainty associated with being informed they cannot continue their studies, particularly for international students who face being deported from the country if they cannot arrange a new visa with a different institution.
- May face issues in the labour market if they hold a degree for an institution that has lost its credibility due to disorderly provider exit.

43. Internal DFE forecasts of provider numbers over the next 10 years suggest there may be a small number of provider exits following the HE reforms. However, we do not know at this stage which providers and therefore which students such closures might affect.

### *Government*

44. If there are no explicit requirements for student protection, then Government faces the following risks;
- a. In the case that HEPs have not put in place arrangements for students to 'teach out' or transfer to another provider, Government may forego the investment (and expected benefits in the form of higher earnings and therefore tax receipts)

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<sup>89</sup> <https://www.gov.uk/tier-4-general-visa/overview>

<sup>90</sup> This was highlighted in a 2015 Competition and Markets authority report on the HE sector *An effective regulatory framework for higher education*. The report concluded "There are also high barriers to switching [course], (for example credits might not be transferable and student may have to incur high financial and social costs if they switch institution)".

[https://assets.digital.cabinet-office.gov.uk/media/550bf3c740f0b61404000001/Policy\\_paper\\_on\\_higher\\_education.pdf](https://assets.digital.cabinet-office.gov.uk/media/550bf3c740f0b61404000001/Policy_paper_on_higher_education.pdf)

that have already been made in the student's education through tuition fee and student support loans (if students lose credit for education already completed).

- b. Indirect costs from potential damage to the HE Sector, including a reduction in the size of the sector, a decline in the numbers of graduates entering the labour market and a reduction in international students, all of which could have a substantial impact on future tax revenues.

#### *Wider society*

45. The key risk to wider society regards the reputation of the UK HE sector. If a provider closes courses in a disorderly way this could reduce confidence in the UK HE sector, potentially impacting on both domestic and international participation. Universities UK<sup>91</sup> estimate that in 2011/12 the total revenue earned by UK Universities amounted to almost £28 billion and the sector directly employed over 378,000 people. Any damage to the reputation to the sector could put the sector's revenue, but also direct and indirect employment at risk.

## **Benefits (monetised and non-monetised)**

#### *Higher Education Providers*

46. At present there are some protections in place for students in the event of course, campus or provider level closure; however, as outlined earlier, these are variable across the sector. In some instances of closure, some HEPs may not prioritise students, and may have other creditors to satisfy. Although disruptive and damaging to students, this option represents minimal burden to HEPs and may be the preferred option for some providers.

#### *Students*

47. There are not expected to be any direct or indirect benefits to students.

#### *Government*

48. There are not expected to be any direct or indirect benefits to Government.

#### *Wider society*

49. There are not expected to be any direct or indirect benefits to wider society.

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<http://www.universitiesuk.ac.uk/highereducation/Documents/2014/TheImpactOfUniversitiesOnTheUKEconomy.pdf>

## Analysis of Option 1

50. Option 1: Introduce a requirement of registration with the OfS for HE providers to have a Student Protection Plan in place that meets OfS guidance (preferred option)
51. HE providers that are classified by the OfS as ‘approved’ or ‘approved’ fee cap through the single gateway will be required to have in place a Student Protection Plan which clearly sets out the arrangements for students in the event of course, campus, department or provider closure and /or de-designation for student support purposes, or revocation of tier 4 licenses. The Student Protection Plan should be transparent, fair and accessible and made explicitly known to the students.
52. HE providers that are classified as ‘registered’ by the OfS will not be explicitly required to have a student protection plan, but will be encouraged to have a plan on a voluntary basis. HE providers operating outside of the single gateway will not be covered by the student protection plan proposals.
53. Providers in scope (approved or approved fee cap) will also be required to notify the OfS of closure at the faculty, campus or provider level.

## Costs (monetised and non-monetised)

54. This analysis is based on the assumption that the OfS guidance will broadly follow the Higher Education Course Changes and Closures; Statement of Good Practice as outlined in para 28.

### *Higher Education Providers – one off costs*

55. Only those HE providers that register with the OfS and are classified as approved or approved (fee cap)<sup>92</sup> will be in scope of the Student Protection proposals. Providers that register with the OfS and are classed as ‘registered’ will not be required to meet the proposals, but can undertake these on a voluntary basis. Registration with the OfS is voluntary<sup>93</sup> however public funding will only be available to HEPs that are classed as ‘approved’ or ‘approved (fee cap)’ with the OfS.
56. Internal forecasting estimates suggest that there will be around 508 providers in scope of the student protection proposals in 2019/20 when they are due to be introduced, rising to 718 by 2028/29 (see table 2 below). These HE provider

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<sup>92</sup> The IA covering introduction of the OfS includes further details of the different operating models. These are not covered in detail in this IA.

<sup>93</sup> Many providers have a duty to be registered.



forecasts are common across a number of HE Bill Impact Assessments. These can be found in annex A of this document. Estimates suggest there will be around 643 providers that are out of scope of the proposals in 2019/20, decreasing to 426 by 2028/29. Both the estimates of providers that are in and out of scope of the proposal include new and existing entrants in the HE sector.

**Table 2. HE Providers in and out of scope of the Student Protection Proposals**

<b>Single Gateway category</b>	<b>19/20</b>	<b>20/21</b>	<b>21/22</b>	<b>22/23</b>	<b>23/24</b>	<b>24/25</b>	<b>25/26</b>	<b>26/27</b>	<b>27/28</b>	<b>28/29</b>
Approved	129	144	159	176	192	208	222	236	249	260
Approved (fee cap)	379	387	395	404	414	423	432	441	449	457
<b>Total in scope of student protection proposals</b>	508	531	555	580	606	631	654	677	698	718
Registered	103	120	134	146	157	165	171	176	180	182
Outside the gateway system	540	492	448	407	368	335	306	282	262	244
<b>Total providers out of scope of student protection proposals</b>	643	612	582	553	525	500	478	458	441	426

### *Initial production and publication costs*

57. Where HEPs in scope of the proposal do not already have a student protection plan in place they will incur one-off costs in the production and publication of their student protection plan. A recent DFE survey of Alternative Providers (see annex B) found that approximately 47% of those surveyed already have a contingency plan in place. As we do not have data covering the whole HE sector we use the AP survey as a proxy and therefore our analysis assumes 53% of providers would be required to put in place a protection plan and incur direct one-off costs from the introduction of this proposal. We assume 269 providers will face these direct costs in 2018/19 and we assume 100% of new entrants will incur one-off costs from producing a student protection plan. The profile of the HE providers in scope and assumed to require a plan is in Table 3.

**Table 3: Forecast of HE providers expected to be in scope and assumed to face one-off costs associated with producing a protection plan**

	18/19	19/20	20/21	21/22	22/23	23/24	24/25	25/26	26/27	27/28	Total
<b>Providers facing on-off costs of producing student protection plans</b>	269	25	26	27	28	27	26	25	24	23	500

58. The Alternative Provider survey also included an estimate of the average amount of time required to produce a student protection plan, putting it at 231 administrative/managerial hours and 252 academic hours. We assume a 75/25 split of administrative and managerial time as the survey does not provide this breakdown, but we assume managers would only have limited involvement in the drafting of protection plans (oversight role). We undertake sensitivity analysis on this assumption; providing a high cost estimate of a 50/50 split of administrative and managerial time and a low cost estimate of a 90/10 split. Annual Survey of Hours and Earnings (ASHE) data provides an estimate of the median gross hourly earnings for these employees, to which we then add 19.8% non-wage labour costs. This provides a total cost of producing a student protection plan of £11,720 per institution.

59. As explained above, DFE internal analysis<sup>94</sup> has been used to estimate the total number of providers in scope of the proposal. Under the assumption that 53% of providers do not currently have a plan in place this means that 269 providers will incur a one off cost from the introduction of the student protection proposal over the 10-year appraisal period.

<sup>94</sup> Further detail of the HE provider forecast modelling is provided in the technical note on provider entry. This has been supplied separately as it underpins all of the HE provider forecasts in the HE Bill Impact Assessments.

60. The OfS will be responsible for the assessment of whether a provider has met the requirement to have a Protection Plan in place and whether they will be able to implement it in the case of closure. This should be a proportionate and risk-based approach which should take account the likelihood and impact of course, campus and provider level closure. As part of the OfS guidance it should set out the assessment process it will use, including where a more robust plan may be needed. The guidance and assessment criteria are uncertain at this stage of policy development, but these will be proportionate and risk-based to reduce burden on business whilst maintaining student protection principles.
61. HE providers in scope will also be required to inform the OfS of any proposed closure of discipline, campus or institution to ensure the OfS has a comprehensive view of the HE sector. The OfS will be responsible for determining how providers should inform them of such changes, although this is expected to be a light touch requirement that could be completed through email or letter.

#### *Costs of implementing the plans*

62. Some providers will also face one-off implementation costs in the event of course closure and the need to activate the plan they have set in place. This will only be for that subset of providers who both face a closure event and who did not already have an effective plan in place.
63. We are not able, at this stage, to estimate or monetise the potential cost to that subset of providers who may ultimately need to implement their plans. This will depend upon the detail of the plans they choose to put in place. Providers will be free to design a protection plan in line with the OfS guidance that best suits the needs of their students. This could include a range of different measures in the event of course closures such as teaching out students or offering financial support to students. These two examples could have very different financial costs in the event that providers needed to implement their plans. Teaching out will incur costs such as retaining staff, use of teaching space, providing on-going support for students, whereas financial support may have a larger up-front cost but minimal on-going costs.
64. Given the strong dependency between these implementation costs and the guidance the OfS will develop, we are not in position to estimate these implementation costs. It would be inappropriate at this stage where we are only taking an enabling power to pre-empt the OfS considerations and the further research and analysis they will wish to undertake. However, once the OfS had developed its guidance then they (if listed in the regulators in scope of the better

regulation framework) or DFE will produce an updated Impact Assessment that taking account of these potential implementation costs.

### *HEPs – on-going costs*

65. HEPs in scope of the Student Protection Plans will be required to keep the plan up to date. There are a number of instances that could trigger an update to the protection plans, for example:

- a. Change or update to the OfS guidance
- b. Change in circumstances of the provider
- c. Where providers choose to change/update their plan

66. It will be for the OfS to determine the guidance and frequency with which the guidance will be updated; however, we would not expect the broad principles (such as those listed in paragraph 29) to change. We would expect changes to the guidance to be infrequent, and to take account of the cost to providers of reflecting them. However, a more detailed assessment of the on-going costs to business will be made once the OfS has been established and further detail on the guidance is known.

67. The OfS will have responsibility for monitoring the financial sustainability, management and governance of HEPs and this will feed into their ongoing assessment of the Provider's Student Protection Plan. Where the risk profile of the provider remains stable, it would be fair to suggest that the monitoring process might have an annual "declaration/confirmation" that the plan is still accurate and relevant. For the purposes of the Impact Assessment we assume there will be no additional on-going costs to business if there have been no change in circumstances for providers.

68. Where the risk profile of a provider changes, the OfS may judge that the impact on students also needs to be reconsidered, and so may suggest that the protection plan is reviewed to ensure it remains satisfactory and credible. Based on analysis of HESA and AP financial data<sup>95</sup> we estimate that 9% of HEIs and 43% of APs may undergo a significant change<sup>96</sup> in their financial situation over a three year period.

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<sup>95</sup> HESA finance data 2012/13-2014/15 and DFE AP internal finance data

<sup>96</sup> A provider is assumed to undergo a significant change in financial position, if: 1. Their annual operating surplus as a % of income has gone up or down by 10 percentage points; AND 2. Their annual operating surplus as a % of income has moved between one of the categories below:

- a. Large surplus – More than 20% of income
- b. Moderate surplus – 5-20% of income
- c. Near-zero surplus (+-5% of income)
- d. Moderate loss – -5-20% of income

69. Using the assumptions above regarding the proportion of providers that are expected to experience a change in financial circumstances we expect there to be 429 instances<sup>97</sup> over the 10-year appraisal period where providers would need to update their student protection plan. As it is uncertain the extent to which providers would need to update their plan (as this will be a risk-based assessment) we have assumed that providers incur 100% of the one-off cost of introducing the plan (£11,720) when required to update their plan. This is likely to be an overestimate as this assumes the plan will need to be completely re-written which would only occur where there were very they significant changes in provider circumstances.
70. Based on the assumptions above, this would result in ongoing costs of £4.2m across the 10-year appraisal period.
71. We do not include in our estimate of on-going costs the fact that HEPs may wish to update their guidance more frequently than that would be required by the OfS or a change in circumstances as this would be over the minimum standard required by the proposals and it is assumed the provider would judge the benefits to outweigh the costs.

### *Students*

72. It is not expected that students will experience any direct costs as a result of the policy changes.
73. There is the potential for an indirect on-going cost if students were required to continue their provision of study at another institution, which could be further from home or have more expensive costs of living. However, this is not as a direct cost of the policy and may occur in any case if a course is destined to close. Even with the potential for increased costs through transfer to a different provider this is likely to outweigh the costs of the counterfactual 'do nothing' option where students are left with uncertainty in the continuity of their study.
74. Any impact would vary by the circumstances of the type of closure (course, campus or provider) and the individual circumstances of the student which means it has not been possible to quantify or monetise these potential indirect costs. Some providers may also add further protections to their SPP that includes

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e. Large losses – loss of more than 20% of income

<sup>97</sup> This is based on the number of providers in scope (including new entrants) of the proposals and the % expected to experience a change in financial circumstances. This is referred to as 429 instances rather than providers as it may be the case that some providers move into and out of different risk categories over the 10-year period, so the same provider may be required to update their plan more frequently due to their circumstances.

financial remuneration to cover any increased costs for students, but this will be determined by HE Providers.

75. As above the policy intention is that the Student Protection Proposals (i.e. the idea that conditions of registration will require providers to have in place a student protection plan) will only apply to HEPs that are classed as 'approved' or 'approved (fee cap)' by the OfS. Accordingly, there remains a risk to students attending HEPs that fall outside the scope of that approach. Internal DFE forecasts estimate that the number of providers operating outside of the system or out of scope of the proposals will decrease from 643 in 2019/20 to 426 by 2028/29. Although this appears to be a large number these are forecast to be small institutions that only account for a small proportion of the sector overall.

76. It is also anticipated that the extent to which such protections exist will be one factor in students' wish to take into account when making their choice of institution.

#### *Government*

77. Government will incur direct costs in the establishment of the OfS, but these costs fall within the scope of the OfS funding model Impact Assessment. We expect the OfS to keep a list of name changes/historical providers to enable the verification of institutions for those graduates of providers no longer operating. As the OfS will operate the gateway and register of providers, compiling this list should not incur any additional burden as the information should already be held by the OfS.

78. There will be a number of providers that are out of scope of the student protection proposals; however as per the policy approach described above; these HEPs will not receive public funding and therefore there are not expected to be any direct costs to Government.

#### *Wider society*

79. Even with the protections offered by the proposals there will continue to be providers that are not required to have student protection plans in place that, in the event of a course, campus or provider closure, although students will continue to have consumer protections. Disorderly exit of any providers which are out of scope of these proposals could have a negative impact on the reputation of the wider HE sector.

## Benefits

### *HEPs*

80. HEPs may benefit from having a clearer process in place for dealing with closure and the continuation of provision for their students. The introduction of the student protection proposals could increase confidence in the HE sector which could have a longer term positive impact on the ability of HEPs to recruit students, compared to HEPs or other education providers that do not have such plans in place.

### *Students*

81. For those students directly affected by a closure at a HE Provider in scope, they will benefit from having access to the student protection plan, which will set out clearly what will happen to them in the event of closure, including arrangements for continuation of their study. This should ultimately help them in continuing their studies with less expense, uncertainty and stress than if their provider did not have adequate plans in place.

82. Students at HE providers that are in scope of the proposals but do not experience a closure may experience benefits associated with the knowledge that the HE provider has a clear student protection plan in place.

83. Students at providers that are out of scope of the proposals could also experience benefits either through the working of competition (when comparing provider's students look at what assurances are given should they face course or institution closure) or simply through the establishment of a new set of norms regarding how responsible providers operate.

### *Government*

84. Government will benefit from reduced financial risk, flowing from:

- HEPs – providers in scope of the student protection proposals are those that receive public funding. The student protection plans put in place by these providers should mitigate some of the risks faced by Government of sudden or immediate HEP closure (i.e. loss of public funds invested in providers through student loan support or historical grant funding).
- Students – the financial implications outlined above (repayment of tuition fee loans and eligibility for student support) should be mitigated by the Student Protection Plans as students have increased likelihood of 'teach out' or transfer arrangements.



## *Wider society*

85. There is a possible English HE sector reputational advantage as institutions will have clear student protection plans in place which set out how students will be treated in the event of course, campus or provider closure. This could make England a more attractive country to study than others where there are limited or no student protections in place.

## **Option 3 (discounted)**

86. A third option was considered whereby the requirement to have student protection plans was more prescriptive in terms of the particular protection that providers must offer their students, such as a requirement for all in scope providers to offer students financial recompense. This option was consulted on in the HE Green Paper and the consultation responses varied: there was widespread acceptance of the policy objective of ensuring students are protected if a provider is not able to fully deliver the student's course. 70% (238 out of 338 respondents) of those who responded to the Green Paper consultation question on contingency arrangements, agreed with the proposal to introduce a requirement for all providers to have contingency arrangements to support students in the event that their course cannot be completed.

87. There was widespread acceptance of the policy objective of ensuring students are protected if a provider is not able to full deliver the student's course.

88. Most respondents were supportive of the proposal, so long as:

- a. All providers are obliged to sign up to requirement;
- b. There was a risk based approach to meeting the requirement, to ensure costs and burdens are proportionate and do not endanger innovation.

89. The view was generally that very prescriptive requirements would be overly burdensome for providers and would be unable to recognise the different operating models and environments faced by different HE providers.

90. Having taken into account all responses to the Green Paper, including the feedback gathered from the sector and HE organisations through that consultation this proposal has not been developed further as an option.

## **Rationale and evidence that justify the level of analysis used in the IA (proportionality approach)**

91. As there have not previously been any consistent requirements for providers to have and make clear plans for how it will protect students in the event of closures, it is difficult to estimate with certainty the potential impact of the policy

on HEPs, students, Government and wider society. The responsibility for setting out guidance on the student protection plans will be with the OfS which has not yet been established. The development of more detailed plans will allow us to develop better estimates of the benefits and costs of the student protection plan. The current estimates are based on the best available information we have at present.

## **Risks and assumptions**

92. The key assumption in the Impact Assessment is that the OfS guidance on the student protection plans largely contains similar principles as set out in the Sector Owned Statement of Good Practice on course changes and closures and Consumer Law but is applied across the sector more consistently. There is a risk that if the OfS either increases or reduces the student protection plan requirements it could place students either at a higher risk (if requirements are substantially reduced) or place HEPs at considerably higher burden (increasing the costs) than is required to meet the stated policy objectives. However, this would be in the context of the OFS principles of risk-based regulation, being unlikely to introducing excessive burdens.
93. This risk is mitigated by the powers for the Secretary of State to issue guidance and directions to the OfS.
94. The analysis is based on the best information and data we currently have available. The assumptions regarding the proportion of HE providers that do not currently have a contingency plan are based on a survey of Alternative Providers. We are aware that different HE providers currently face different regulatory environments and therefore may be more or less likely to currently have contingency or protection plans in place. However, we do not have sector wider information on the numbers of providers with plans in place, therefore we have applied the findings from the Alternative Provider survey (53% do not have a protection plan in place) to the whole sector. This is the same approach we have used to estimate the number of hours required to produce the protection plan.

## **Small and Micro Business Assessment**

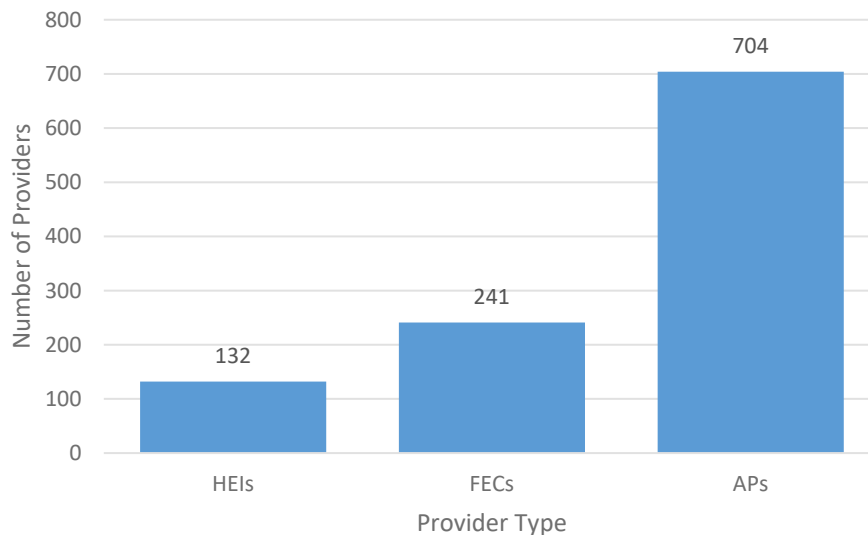
95. In the higher education sector, the size of a provider is usually based on the size of its student population, as it is considered more relevant than employee numbers. For example, institutions with the same number of employees may have significantly different student populations, and therefore could greatly vary in size. However, for the purposes for the Small and Micro Business Assessment, we look at the number of employees at each institution.
96. 2015/16 HESA data shows that HEFCE funded Higher Education Institutions (HEIs) have on average 2,516 employees and that the smallest number of

employees at a single HEI is 95. Analysis of the Further Education workforce data for England Report shows that the average FTE staff per college is 383 for England. Therefore, we do not believe any HEI or FEC to be classified as a small business for this assessment.

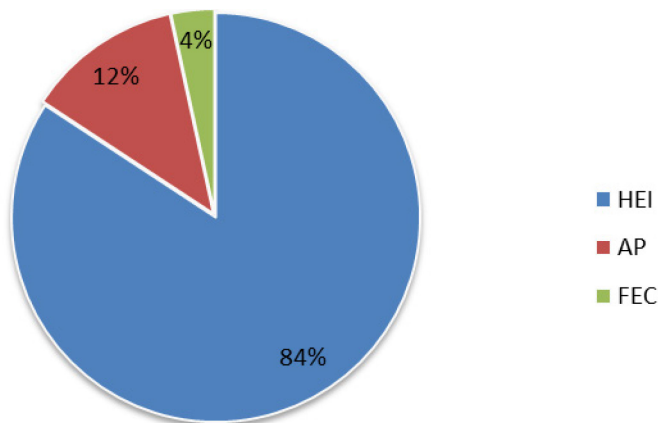
97. However, according to a DFE survey of Alternative Providers (APs) 95% (out of a sample of 160 APs) had 50 employees or fewer. The AP survey included all such providers, which in the new regulatory system would include many out of scope of the Student Protection Proposal, as they would choose to either be unregistered or registered (not approved). Therefore, these findings are unlikely to be representative of the APs in scope. However, as we do not hold further detail of the split between small business in or out of scope of the proposals, we assume that 95% of APs in scope of the proposal are classed as small. Our expectation is that this is an overestimate.

98. Figure 4 demonstrates that there are a large number of APs in the HE sector, considerably more in comparison to HEIs and FECs, which suggests there are a relatively large number of small businesses in the HE sector. However as shown in Figure 2 although there are a large number of APs they only had 12% of the total number of HE students in 2015/16.

**Figure 1 Number of providers in each category, 2015/16**



**Figure 2 Breakdown of higher education students in 2014/15, by type of provider**



99. The Student Protection proposal will cover all types of providers and will be implemented using a risk-based approach. We would expect new entrants to be smaller and they will have limited financial history, which due to the risk based approach may require them to explain further their approach or put in place additional guarantees than providers who have a stable financial position. Therefore, the burden on smaller, in particular new providers may be disproportionately greater than for larger providers.

100. The estimated average one-off cost of £11,720 from the requirement to have a student protection plan in place is an average across all HEPs. Although we expect the burden to be proportionately larger for small businesses, we would expect costs to be higher for larger businesses which have a wider course offering and larger student population. However larger providers may benefit from economies of scale as the basic principles of any student protection plan could be applied across different faculties in a relatively light touch way; smaller providers will not benefit in this way and therefore costs are expected to be proportionately higher for these providers.

101. As the guidance for the student protection plans has not yet been agreed it has not been possible to assess the additional costs to small providers compared to larger providers. Once the OfS has been established we will make a more detailed assessment of the additional burden for small providers

102. Full or partial exemption of small providers from the requirement to have a Student Protection Plan would significantly reduce the effectiveness of the policy. This is because it would undermine the policy objectives to ensure students are protected from course closure and this protection for students should not be reduced simply due to provider size.

103. An extended transition period or temporary exemption for small businesses would mean that students attending small providers would not be protected against course closure for the period of time that the transition is extended or exempted so is not appropriate for this policy.

104. Varying the requirements by type and/or size of business will not achieve the policy objectives, as it will result in differential scrutiny based simply on provider size which is not necessarily a relevant proxy for course closure. As stated above, the policy will be implemented using a risk based approach, which is more appropriate for this type of policy.

105. When the OfS brings forth the guidance for providers, consideration will be given as to whether small providers would benefit from having further information, user guides or training which is specific to their size of business. This is something that will be raised with the regulator once it has been established.

106. It would not be possible to give smaller businesses financial aid, as the HE Bill proposals intend to create a level playing field between all types of providers. Offering financial aid to smaller businesses will contradict these proposals.

107. It would not be possible to make student protection requirements voluntary as this would result in inconsistent protection for students, which is the issue that the proposal seeks to address. Paragraph 29 provides an overview of the Statement of Good Practice for course changes and closures which is already in place on a voluntary basis. Although this is a good starting point it does not guarantee student protection and there are students that remain unprotected in the event of course closure.

108. Overall, there will be a relatively greater burden on smaller businesses compared to larger businesses as a result of the requirement for providers to have a Student Protection plan but it is not possible to mitigate these as it will contradict the policy objectives and result in some students remaining unprotected in the event of course closure.

<b>Title:</b> Introducing registration fees for Office for Students  <b>IA No:</b> BIS006(F)-HE  <b>RPC Reference No:</b> RPC-3338(1)-BIS  <b>Lead department or agency:</b> Department for Education  <b>Other departments or agencies:</b> HEFCE, OFFA	<b>Impact Assessment (IA)</b>			
	<b>Date:</b> 11/12/17			
	<b>Stage:</b> Enactment Stage			
	<b>Source of intervention:</b> Domestic			
	<b>Type of measure:</b> Primary Legislation			
<b>Summary:</b> Intervention and Options				<b>RPC Opinion:</b> GREEN

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out	Business Impact Target Status
£0	£-182.2	£18.3		

**What is the problem under consideration? Why is government intervention necessary?**  
The existing regulatory system for higher education is outdated. There is a strong case for establishing a new market regulator that reflects the fact that funding comes predominantly via the student and to capture the full diverse range of providers within the HE sector. Currently, HEFCE and OFFA (main regulating bodies in the HE sector) are fully taxpayer funded. It is proposed that part of the cost of regulation is borne by the sector rather than the taxpayer, given budget pressures and moving to a similar model to central regulators in other sectors (e.g. healthcare, school education, utilities).

**What are the policy objectives and the intended effects?**  
To move to a funding model for the central regulatory body, which:

- Results in savings for the taxpayer and ensures a predictable and sustainable income to meet OfS costs
- Is efficient and economical for the OfS to administer, based on data that can be verified
- Allocates costs fairly and operates on a cost recovery basis
- Does not create barriers to entry or deter high quality new entrants

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

**Option 0:** "Do nothing" – Office for Students (OfS) fully funded by the government

**Option 1:** Giving the OfS a power to charge registration fees to providers.

<b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> 2023/2024				
Does implementation go beyond minimum EU requirements?			N/A	
Are any of these organisations in scope?			<b>Micro</b> Yes	<b>Small</b> Yes
			<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> N/A	<b>Non-traded:</b> N/A

**I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.**

Signed by the responsible Minister:



Date: 11/12/17

# Summary: Analysis & Evidence

# Policy Option 1

Description: Introducing registration fees for Office for Students

## FULL ECONOMIC ASSESSMENT

Price Base Year 2017	PV Base Year 18	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0.00	High: 0.00	Best Estimate: 0.00

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.00	16.0	133.6
High	0.00	24.2	202.5
Best Estimate	0.00	21.8	182.2

### Description and scale of key monetised costs by 'main affected groups'

HE Sector – A proportion of the ongoing annual administration costs will be transferred to the sector. Decisions on the final structure of charging will be subject to consultation – the estimates here are purely indicative.

### Other key non-monetised costs by 'main affected groups'

There will be small familiarisation costs for the HE providers when the new system is introduced.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0.00	16.0	133.6
High	0.00	24.2	202.5
Best Estimate	0.00	21.8	182.2

### Description and scale of key monetised benefits by 'main affected groups'

The costs of regulation transferred to the sector will constitute a net benefit to taxpayers.

### Other key non-monetised benefits by 'main affected groups'

A co-funding model will help support greater efficiency in regulating the sector through greater transparency and accountability. A better regulated sector should lead to more choice and competition in the HE sector, improving student outcomes and value for money. It should also support confidence in the sector; allowing for better choices to be made, enabling a more diverse range of providers to develop and making it even more accessible to those from currently under represented backgrounds.

### Key assumptions/sensitivities/risks

Discount rate (%)

3.5

The OfS operating model is being developed. All cost estimates should be seen as indicative and subject to change following more detailed work on the operation of the OfS. The OfS funding model – it is assumed that the majority of costs are covered by the sector, with continued taxpayer support (subject to overall departmental budgets and HM Treasury agreement) to ensure fairness, deliver wider public policy objectives, ensuring fees do not deter new entrants or create a disproportionate burden to any provider.

## BUSINESS ASSESSMENT (Option 4)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: 18.3	Benefits: 0.0	Net: -18.3	

## Background

1. The methodology in this Impact Assessment differs from the Bill IA slightly, these changes include:
  - a. **Do not include HEFCE contracts with the Higher Education Statistics Agency (HESA) and the Quality Assurance Agency (QAA)** – HEFCE currently funds HESA and QAA to carry out certain activities necessary for the sector. Under the new regulatory landscape, the OfS is expected to designate bodies, the Designated Quality Body and Designated Data Body, to carry out such functions. These bodies will have the power to charge providers fees to recoup the cost of undertaking these statutory activities. These costs were taken into account in the previous Impact Assessment<sup>98</sup> by adding the cost of HEFCE’s contracts with HESA and QAA on top of the combined costs of HEFCE, OFFA and AP resource transferring to contribute to the estimated baseline OfS operating costs. These costs have not been included in the OfS’s operating costs baseline in this Impact Assessment.
  - b. **10% efficiency savings** – The 2016 Impact Assessment assumed that in 2018/19 the OfS would realise a 10% efficiency saving. However, it is now assumed that this 10% efficiency saving will not be realised until 2019/20, a year after the OfS is fully functional, as it will take time for the OfS to be able to make these efficiency savings.

## Creation of the Office for Students (OfS)

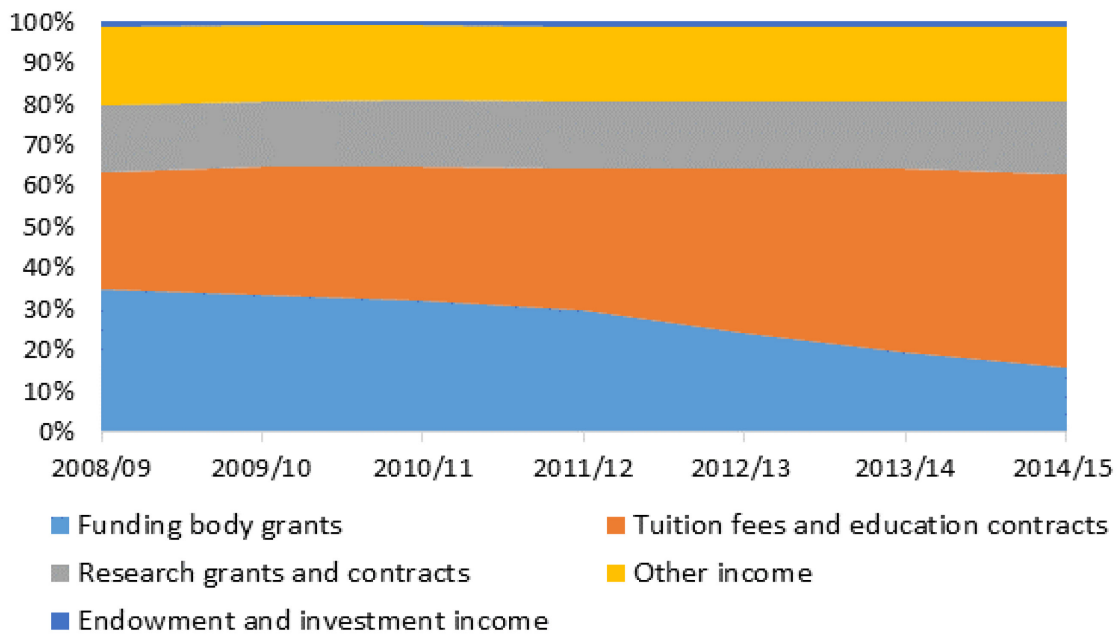
2. The higher education funding system in England has undergone many changes over the past 20 years. Most notably, there has been a sizeable shift in the way Higher Education Institutions (HEIs) are funded. As Figure 1 below clearly shows, the proportion of funding for teaching provided by direct grant from the Higher Education Funding Council for England (HEFCE) has declined significantly, while the share of funding from tuition fees has increased.

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<sup>98</sup> Higher Education and Research Bill Detailed Impact Assessment – Introducing registration fee for Office for Students (June 2016) <https://www.gov.uk/government/publications/higher-education-and-research-bill-impact-assessment>



**Figure 1. Sources of Income for UK HEIs, Percentage split.**



3. Given the student, supported by taxpayers, is now the primary funder of higher education, we need a new market regulator that operates on behalf of the student and taxpayers; supporting a competitive environment and promoting choice, quality and value for money. The existing regulatory system, built on a declining proportion of direct grant funding and which does not apply to all providers in the sector, is outdated and in need of reform, with a streamlining of the regulation under one body and a consistent set of conditions for all providers.
4. It is therefore proposed that a new regulatory body, the Office for Students (OfS), will be established, with a new focus on competition and choice and combining the existing regulatory functions of HEFCE and OFFA (the Office for Fair Access). It will have clearer and consistent powers to regulate the sector, by attaching regulatory conditions to providers that enter the system. The conditions will be consistent between all types of providers – Higher Education Institutions, Alternative Providers, Further Education Colleges and new entrants.
5. The two core parts of the new regulatory system would be the creation of the OfS and the single entry gateway it will operate for prospective Higher Education Providers. This will form the essential ‘framework’ on which to base the regulatory requirements of higher education (such as quality assurance, widening participation, data and information requirements). These requirements would be applied by the OfS as a condition of having gone through the gateway and becoming a formally recognised provider.

6. As a result of the reform, we would:

- **Enable more new universities to enter the system so students can choose from a wider range of institutions.** The reforms will make it easier for new high quality providers to enter the sector, achieve degree awarding powers and secure university status.
- **Raise teaching standards and improve student choice in higher education.** A new Teaching Excellence Framework will assess providers' performance across different aspects of teaching (teaching quality, learning environment, student outcomes). Through this, students will have access to better and more relevant information than ever before when choosing a course. OfS will be responsible for operating the Framework.
- **Place students at the heart of higher education regulation.** For the first time, the principal regulator for the higher education sector will have an explicit legal duty to promote choice and consider the student, employer and taxpayer interest in all its regulatory and funding decisions.
- **Improve transparency to put more information in the hands of students.** The reforms will make more information available to students than ever before, to enable potential students to make better choices and to shine a spotlight on universities that need to go further on social mobility. Universities will be required to publish detailed information about application and success rates, broken down by ethnicity and socio-economic background.
- **Enhance the reputation of our world-class higher education system.** The new regulator will operate a risk-based approach to regulation that concentrates regulation where it is needed while reducing burdens on the best performing providers. The measures, for the first time, establish a power to "enter and inspect" a provider where there are suspicions about serious misuse of public funds.
- **Deliver a more efficient regulatory regime.** The Green Paper set out a vision for transforming the HE landscape to create a simpler and more efficient regulatory system and reduce the number of organisations that have a publicly funded regulatory role. Through bringing together the functions that currently sit across different bodies into a coherent market regulator, we can avoid duplication of effort and streamline the regulatory functions, with more power in the hands of the sector as co-funders of the regulator to ensure costs are driven down.

7. Only the functions currently funded by government will be brought together within OfS, and neither HEFCE nor OFFA currently have legislative powers to charge registration fees. The entirety of OfS set-up costs will be funded by government. The establishment of the OfS in itself is therefore not going to have direct costs or benefits to business, though there may be some small familiarisation costs. There

will be indirect benefits to the sector in terms of clearer regulatory architecture and where the greater confidence it provides students leads to greater uptake (domestic and international). As there will be no direct impact on business, associated with establishing OfS, its impacts are not assessed here.

## Problem under Consideration

8. Currently, the operating costs of HE regulatory bodies are borne partly by the sector (Quality Assurance Agency, Higher Education Statistics Agency, Office for Independent Adjudicator, etc.) and partly by the Government (HEFCE, OFFA). In simplifying the regulatory architecture, we will look to build on this co-funding model.
9. There are other instances where an economic regulator is partly funded by the sectors they regulate. These include telecommunications (Ofcom), electricity and gas (Ofgem); and health and social care (CQC)

## Rationale for intervention

10. There are several reasons for partly funding the OfS through registration charges. These include:

- **Fairness:** Currently costs of HEFCE/OFFA are fully covered by the taxpayer. This effectively means that a taxpayer who has never been through the HE system would still contribute to the administration costs of the regulator. For those who have studied, taxes paying for the operation of the regulatory body would come on top of their student loan repayments, despite them being out of education for potentially many years.
- **Budgetary pressures:** The Government has announced targets to reduce public spending in this Parliament. The model where providers cover some of the costs of the new regulator would realise savings to the taxpayer, contribute to the stability of public finances and enable government funding to be focused towards areas of market failure where funding is required to deliver public policy outcomes in a way that represents value for money.
- **Accountability:** Asking providers to contribute to the cost of OfS would give them an incentive to hold the regulator accountable and challenge the efficiency of the regulatory system. This will be encouraged by a responsibility on the OfS to report on the costs of administering the regulation of the sector.

## Policy objective

11. It is envisaged that the OfS will have powers to charge providers a fee as a condition of registration.
12. Under the new single gateway system a higher education provider could choose to operate as a “Registered - Basic” provider, where they are simply recognised by the

government, or as an “Approved” or “Approved (fee cap)” provider, which would enable them to gain access to student loan and grant funding, as well as recruit international students<sup>99</sup>. We do not include “Registered - Basic” providers in this analysis as their cost of regulation is likely to be negligible<sup>100</sup>. An “Approved” or “Approved (fee cap)” provider will, however, require a greater level of monitoring and regulation. The details of the charging structure that will apply to them will be set out in secondary legislation and subject to consultation. However, we would expect the following principles to be considered when designing a system of fees:

- **Allocating the costs of the system proportionately to not create an undue burden on a particular provider.** Fairness dictates that providers, that are costlier to regulate, would need to incur relatively higher registration fees. That could also create additional incentives to improve efficiency
- **Not creating disproportionate barriers to entry.** Entry of new providers is important as it improves choice for students and incentivises innovation from existing providers. Newer providers to the “Approved” part of the sector would cost OfS the same, or possibly even more than incumbent providers to regulate in the initial years of their operation, as OfS would need to assure that entrants offer high quality provision and are likely to be financially sustainable. However, the full cost of regulation could be unaffordable to new providers and thus could discourage entry.
- **Not creating a competitive disadvantage for smaller providers.** Similar principle applies to smaller providers. If all providers were charged the same fees irrespective of size, the burden of fees would form a much higher proportion of smaller providers’ budget, and would prevent them from competing on a level playing field with large HE providers. This would dictate that fees should be proportionate to size of the provider, to ensure regulation does not distort competition in the sector. Ensuring that smaller providers are not disproportionately affected by regulation is also in line with the *Better Regulation Framework Manual*<sup>101</sup>.

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<sup>99</sup> “Registered - Basic” providers would be formally recognised by government, subject to check of their qualifications and requirements on student protection. They would not gain access to government funding or ability to recruit international students.

“Approved”: Gain access to up to £6,000 tuition fee loans for undergraduate students, with no cap on tuition fees, and no requirement to sign up to an access agreement (but with a policy statement on widening participation in HE). Able to recruit international students as a Tier 4 visa sponsor.

“Approved (fee cap)”: A £9,000 tuition fee loan cap, a cap on fees at £9,000, a requirement to sign up to an access agreement if fees charged are more than £6000, and eligibility for government grant. Able to recruit international students as a Tier 4 visa sponsor.

<sup>100</sup> “Registered” providers would not be subject to monitoring, and would only undergo a light-touch check of their qualifications.

<sup>101</sup> [Better Regulation Framework Manual](#)

## Options under consideration

13. This impact assessment covers giving the OfS the power to charge the registration fees.

**Option 0: Do nothing:** Government does not have the power to charge providers registration fees, therefore the regulatory body for higher education would remain fully funded by the taxpayer.

**Option 1: Office for Students gaining a power to charge registration fees.** This would recognise that OfS would have benefits both for the providers, the students and the economy at large.

14. The specific funding model will be subject to public consultation, to gather the sector's views on the principles and design of the funding model. The funding model would then be set out in a statutory instrument, and fully assessed in a corresponding impact assessment.

## Expected OfS operating costs

### *Establishing baseline operating costs*

15. The following analysis should therefore only be seen as indicative at this stage ahead of further more detailed work on its design and implementation, and agreeing a charging structure in secondary legislation subject to HM Treasury consent.

16. The estimates of operating costs of HEFCE and OFFA come from the most recent published accounts of the two organisations<sup>102</sup>. Table 1 shows the overall expenditure of HEFCE and OFFA in 2016-17. "Operating expenditure" covers the costs that form the baseline for our estimates.

**Table 1. HEFCE and OFFA expenditure 16-17**

Operating expenditure £ thousand actual	HEFCE 16-17	OFFA 16-17
Staff costs	18,904	1,267
Support costs	6,190	257
Other		403
Depreciation, amortisation (non-cash)	226	
<b>Gross operating expenditure</b>	<b>25,320</b>	<b>1,927</b>

<sup>102</sup> HEFCE annual report and accounts 2014/15 <http://www.hefce.ac.uk/about/reportsaccounts/>  
OFFA annual report and accounts 2014/15 <https://www.offa.org.uk/publications/annual-reports/>

17. To this figure, two sets of adjustments are made to reach the baseline cost estimate (i.e. costs before allowing for efficiencies stemming from the merger of HEFCE and OFFA functions into a single regulatory body).

18. The first set of adjustments involves two deductions to the HEFCE gross operating expenditure figure of £25,320,000:

- HEFCE currently bears part of the responsibility for managing the Research Excellence Framework and allocating research funding for providers, as well as wider responsibilities that will transfer into Research England<sup>103</sup>. It has been estimated that 28 full-time equivalent (FTE) posts in HEFCE are directly responsible for this function,<sup>104</sup> though the final confirmation of this will be subject to the process of transferring staff into the two organisations and negotiations with Trade Unions and staff. In the new system, this will move to UK Research and Innovation (UKRI), as a part of the future consolidation of research funding under one body. As there were 325 FTE staff at HEFCE in as of March 2017, it is assumed that there would be a cost saving of around 9% (28/325). This would amount to a £2.2m (£25.3m x 9%) deduction<sup>105</sup>.
- While HEFCE only has duties to regulate English HE providers, it also performs similar functions for the Devolved Administrations (DAs) on a contractual basis. The powers allocated to the OfS will also only relate to England. The OfS may work jointly with the DAs, but we would expect this to be on a contractual basis and for the OfS to recover costs from the DAs. Therefore, to get comparable estimates, the costs of contracts with the Devolved Administrations have to be excluded from the baseline estimates. This would amount to £80,000<sup>106</sup>, which relates to various services provided to the Department for the Economy in Northern Ireland, which will be deducted from HEFCE operating costs. The provision which allows the OfS to make arrangements for rating the quality and standards of providers in Wales, Scotland and NI is s25 of HERA, which is due to come into force on 1 January 2018.

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<sup>103</sup> A part of UKRI

<sup>104</sup> Source: Internal DfE estimates

<sup>105</sup> No further data on specific costs of this staff is available, so it is assumed that proportion of HEFCE operating costs spent on research funding is equivalent to the proportion of this staff in the organisation.

<sup>106</sup> DfE discussions with HEFCE

**Table 2. England-only costs of HEFCE in 2016-17**

<b>Cost category</b>	<b>Cost (£000s)</b>
<b>HEFCE operating costs</b>	25,320
<b>- Research funding</b>	-2,181
<b>- NI contract</b>	-80
<b>England-only HEFCE costs</b>	<b>23,059</b>

19. The second set of adjustments relate to the inclusion of additional items of expenditure associated with HEFCE's responsibilities around regulation and quality assessment:

- DfE currently has partial responsibility for managing alternative providers (APs) of higher education, including monitoring, designation and annual re-designation<sup>107</sup>. This would be fully transferred to the OfS in the new system. As a baseline for that part of the costs, we use the figures of DfE staff costs and overheads that cover this area, totalling £598,000<sup>108</sup> altogether in the 16-17 financial year. Although final confirmation of this will be subject to the process of transferring staff and negotiations with Trade Unions and staff.

20. Taking all of these adjustments into account, the baseline estimate for OfS operating costs (before allowing for efficiency savings) is estimated to be £25.4m as shown in Table 3 below. This does not include costs of operating the new Teaching Excellence Framework, which will not form a part of registration fees and will be assessed in a separate impact assessment.

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<sup>107</sup> Checks undertaken to ensure that APs are offering higher quality provision and are financially stable, before they can offer student loans for students at their courses. APs are then subject to annual re-designation where they need to provide evidence of their continued financial sustainability, student numbers and quality of course provision.

<sup>108</sup> (Average grade salary\*19.8% non-wage uplift)\*number of people in the grade (14 FTE posts at varying grades). A 19.8% uplift has been applied to the wage rate figures to include non-wage costs. Eurostat defines wage and salary costs as direct remunerations, bonuses, and allowances paid by an employer in cash or in kind to an employee in return for work done, payments to employees saving schemes, payments for days not worked and remunerations in kind such as food, drink, fuel, company cars, etc. Non-wage costs are defined as the employers' social contributions plus employment taxes regarded as labour costs less subsidies intended to refund part or all of the employer's cost of direct remuneration. Using Eurostat data, non-wage costs as a percentage of wage costs were approximately 19.8% at the time of writing. The underlying data can be found at <http://ec.europa.eu/eurostat/tgm/refreshTableAction.do?tab=table&plugin=1&pcode=tps00173&language=en>

**Table 3. Total baseline estimated OFS operating costs, £ thousand**

Category	Cost
A: HEFCE 16-17 total operating costs (England only)	£23,059
B: OFFA 14-15 total operating costs	£1,927
C: DFE AP resource transferring	£598
<b>TOTAL</b>	<b>£25,584</b>

21. All figures in Table 3 are given in the financial year 2016-17, these are then translated into the academic year 2016/17, to give a baseline operating cost of the OfS of £25.5. All analysis onwards is in academic year.

### ***Expected efficiencies***

22. The figure of £25.5 million provides a baseline for the costs of OfS, based on current expenditure on related functions. Once created, the OfS is likely to generate cost savings, stemming in part from the replacement of HEFCE and OFFA with a single regulatory body, and in part from the move to a risk-based, more efficient regulatory framework.

23. It is estimated that a 10% efficiency saving would be achieved relative to baseline costs. However, differing from the previous 2016 Impact Assessment<sup>109</sup>, which assumed this saving would be realised from year 1 (2018/19) we now assume that these savings will not be realised until 2019/20. As the OfS will be operating under HEFCE and the Director of Fair Access' (DFA's) powers until 19/20 and will only have its full suite of regulatory powers from then. Efficiency savings can only begin to be achieved once the OfS and the new regulatory regime is fully operational.

24. This means that the baseline for operating costs is £25.5m<sup>110</sup> for 2016/17 It is assumed that the running costs will rise in line with economy-wide inflation. Adjusting for forecast RPIX inflation<sup>111</sup>, the expected operating cost for 2018/19 is then **£27.7 million**, and in 2019/20 when the 10% efficiency saving is realised the expected operating cost is **£26.2 million**. We have assumed a 10% efficiency saving from 2019/20 resulting from merging HEFCE and OFFA functions and the introduction of more efficient systems, such as the risk-based regulatory framework. The regulatory framework, on which a parallel consultation is taking place, has yet to

<sup>109</sup> Higher Education and Research Bill Detailed Impact Assessment – Introducing registration fee for Office for Students (June 2016) <https://www.gov.uk/government/publications/higher-education-and-research-bill-impact-assessment>

<sup>110</sup> Total in table 3

<sup>111</sup> data is updated OBR RPIX estimates for Jan-Mar quarter – published in March 2017.



be finalised and as such we are not able to provide a more developed estimation of possible savings at this point.

### ***Dynamics of the operating cost***

25. As mentioned, there is a range of related reforms due to be introduced in the HE sector, which the creation of OfS will enable. These reforms will open the market to high quality new providers and create a level playing field between established providers and new ones. This is expected to lead to a significant increase in the number of providers within the regulated system, improving choice for students and putting pressure on existing providers to improve their offer. That would mean OfS having responsibility for a greater number of providers.
26. It is expected that operating costs will increase over time as the number of providers in the regulated sector rises. HEFCE has estimated that if the number of providers in the sector was to double, their operating costs would increase by 50%.
27. We do not include Registered Basic providers in the analysis of the OfS's operating costs. Nor do we take into account any changes in the numbers of Registered Basic providers when calculating annual changes in the OfS's operating costs; i.e. we do not assume that any increase/decrease in the number of Registered Basic providers would necessitate any increase/decrease in the OfS's operating costs, as the cost of regulating a Registered Basic provider are likely to be very small based on current proposals. An Approved or Approved (fee cap) provider would, however, require a comparatively far greater level of monitoring and regulation<sup>112</sup>.
28. The tables below show the projected number of providers which would be regulated and the operating cost of OfS<sup>113</sup> over time. It is assumed that the OFFA component of operating costs increases at the same rate as HEFCE cost. The increase in operating costs over time is due to two factors: (i) increase in the number of regulated "Approved"/"Approved (fee cap)" providers and (ii) inflation. The same assumptions on the number of providers in the new system are used across all Impact Assessments in the 2017 HE and Research Act<sup>114</sup>.

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<sup>112</sup> It is also assumed that the mix between "Approved" and "Approved (fee cap)" remains constant throughout the period. This is a simplifying assumption and it does not have a significant impact on total cost.

<sup>113</sup> Increase in gross operating costs is calculated with 50% of costs fixed and 50% directly proportionate to number of "Approved"/"Approved (fee cap)" providers. E.g. for 2019/20 it's (£25.5 million \* 50%) (fixed element) + (£25.5 million \* 50%) \* (531/508) (variable element) = £26.1 million \* 10% efficiency savings = £23.5 \* RPIX inflation = £26.2 million.

<sup>114</sup> Detailed forecast is provided in Annex A

**Table 4. Expected OfS operating cost by year**

	18/19	19/20	20/21	21/22	22/23	23/24	24/25	25/26	26/27	27/28
Total “Approved”/ “Approved (fee cap)” providers	508	531	555	580	606	631	654	677	698	718
Operating cost of OfS, £million	27.7	26.2	27.7	29.2	30.7	32.3	33.8	35.4	36.9	38.5

## Analysis of policy options – Giving OfS power to charge registration fees

29. An alternative non-legislative option to the recommended proposal is not appropriate in this case as a legal power is needed for OfS to charge registration fees to the sector. The only alternative would be for taxpayers to fully fund the Office for Students, which is the ‘do nothing’ option.

30. This impact assessment covers primary legislation to give OfS the power to charge registration fees. The actual amounts charged or the funding model would not be set out in legislation, and decisions on them are due to be made at a later point, and will be refreshed regularly. There will be a separate public consultation on the issue to get views of the sector on the precise charging model. The description of “Option 1” below assumes a potential shape of the future system; however, the actual funding model could end up being quite different following consultation with the sector.

### Giving OfS power to charge registration fees

31. The key principles, as discussed above, to be applied in determining the shape and level of registration fees are:

1. Fairness
2. Not creating disproportionate barriers to entry
3. Not disadvantaging any particular category of providers

32. There are likely to be trade-offs between these principles, and the Government will consult on how to achieve the right balance between them. At this stage, it makes sense to assume a simple system, which is consistent with the above principles. Such a system could be:

- **The cost of regulating new providers is covered by the Government for a set period until the new institution is established.** Entry of new providers into the sector would be good for students through the creation of competitive

pressures on certain parts of the sector. There is a risk that asking new providers to cover the costs of regulation could place a disproportionate burden on them during their first few years of operation. To reduce the barriers to entry, registration fees could be subsidised for first few years, while the provider gets on a more stable footing, subject to agreement with HM Treasury and overall departmental budgets. It would not necessarily be fair, as an alternative, to ask incumbent providers to fund the entry of their competitors.

- **Registration fees would be proportionate to the number of students at the institution.** Smaller institutions have lower income and could potentially suffer disproportionately from the burden of legislation. Government's Better Regulation Framework thus suggests that policymakers should have particular regard for small firms (those with less than 50 employees<sup>115</sup>) in designing new policy. Making the fees proportionate to size of the institution would thus help to ensure smaller institutions are able to compete with larger ones and grow.
- **Fees differentiated between different operating models of the provider.** Providers on different models will face different processes and ongoing monitoring<sup>116</sup>. It is anticipated that providers entering as *Registered Basic* would have to pay, at most, a minimal fixed registration fee – they will incur a very small cost to OfS and this would avoid creating a barrier to entry. Institutions in *Approved (fee cap)* category would then have a proportionately higher registration fee, reflecting the more in-depth financial and monitoring checks that would be needed to give Parliament assurance on those providers that receive direct grant funding and the administrative costs of signing an access agreement.

### ***Split between costs covered by sector and taxpayer***

33. The previous section set out an estimate of expected operating cost of OfS at approximately £27.7 million in 2018/19. As outlined above, the costs are expected to be split between government and the sector, subject to the outcome of consultation and agreement with HM Treasury. Below we estimate the costs that might be covered by the taxpayer, with the remaining OfS operating costs being assumed to be covered by providers.

34. The OfS will be formally established on 1 January 2018, with costs incurred up to this date and for the remainder of 2017/18 covered by the government as part of its 2017/18 budget settlement with HEFCE. We focus on 2018/19 as our start, as this is

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<sup>115</sup> While Better Regulation Framework suggests that enterprises with smaller number of employees are treated differently, however, for Higher Education Providers full-time equivalent students are a better indicator

<sup>116</sup> Registered" status involves a basic check of whether qualifications are consistent with *The Framework for Higher Education Qualifications (FHEQ)*. Gaining "Approved" status involves a check of Financial Sustainability, Management and Governance, as well as a review by QAA. Gaining "Approved (fee cap)" status also involves a higher level of FSMG checks and an option to charge fees of up to £9,000 if the provider signs an access agreement with OfS.

the point at which the OfS will begin to discharge a number of its functions, including maintaining and populating the new register of higher education providers. The government has committed to fund the OfS's operating costs during this transition year. We focus on 2019/20 when estimating providers' registration fees, as this is the first year in which providers will be required to pay registration fees, as this is the first year that the new regulatory framework is expected to be fully operational and that providers are expecting to derive benefit.

35. The government will fund all of the OfS's operating costs in year 1 (2018/19). The cost is estimated to be around £27.7m.
36. In subsequent years, we have assumed that the government would fund 25% of the OfS's operating costs – the actual amount of government contribution will depend on the nature of the operating costs and overall departmental budgets, subject to agreement with HM Treasury. There are the two key parts of the cost that might be funded by the government in the new system:
- a. **Funding for activities that have wider economic benefit.** Beyond the direct regulatory functions, it is expected that the OfS will be well placed to perform other functions, which may not directly benefit the providers, but would have large societal benefits. Examples could include the OfS undertaking work directly for the government, such as the production of analysis and research about the HE sector or specific monitoring work which they do that has external benefits to society beyond a given institution, such as tackling extremism through the Prevent framework.
  - b. **Costs of regulating new providers** – (those that entered in the past 3 years). There is a pro-competition argument for the taxpayer to partly cover a new provider's regulatory costs in its early years (assumed here to be during its first three years). It is currently very difficult to specifically ascribe the likely level of operating costs of the OfS to a particular provider or type of provider which it will be regulating. Large, well-established providers could be more costly to regulate because they offer a greater range of taught courses. On the other hand, some smaller, new providers could be less financially stable and have less well-established quality assurance practices, which might lead to more intensive monitoring depending on the final regulatory framework.
37. "Total registration fees" in Table 5 represents the added cost to business in each year, the total amount of the OfS operating costs which will be recouped through the registration fees of all registered HE providers.

**Table 5. Indicative expected split between OfS costs funded by Government and through registration fees<sup>117</sup>, £million**

	18/19	19/20	20/21	21/22	22/23	23/24	24/25	25/26	26/27	27/28
Inflation adjusted OfS operating cost	27.7	26.2	27.7	29.2	30.7	32.3	33.8	35.4	36.9	38.5
Total government support (%)	100%	25%	25%	25%	25%	25%	25%	25%	25%	25%
Total Government support <sup>118</sup> (£) <sup>119</sup>	27.7	6.6	6.9	7.3	7.7	8.1	8.5	8.8	9.2	9.6
<b>Total Registration fees<sup>120</sup></b>	<b>0.0</b>	<b>19.7</b>	<b>20.7</b>	<b>21.9</b>	<b>23.0</b>	<b>24.2</b>	<b>25.4</b>	<b>26.5</b>	<b>27.7</b>	<b>28.9</b>

<sup>117</sup> OfS baseline estimates are provided in financial years, any analysis is provided in academic years.

<sup>118</sup> Ongoing government support dependent on departmental budgets, subject to agreement with HM Treasury

<sup>119</sup> YR 1: Inflation adjusted OfS operating costs\*100%

Subsequent YRS: Inflation adjusted OfS operating costs\*25%

<sup>120</sup> = (Inflation adjusted OfS operating costs - total government support)

**Table 6 - New providers entering the Approved and Approved (fee cap) categories each year**

	19/20	20/21	21/22	22/23	23/24	24/25	25/26	26/27	27/28
"New" providers <sup>121</sup>	25	26	27	28	27	26	25	24	23
Cumulative "new" providers <sup>122</sup>	25	51	78	81 <sup>123</sup>	83	82	78	74	71

38. It is proposed that ‘new’ providers would be partially subsidised for three years, subject to overall departmental budgets and agreement with HM Treasury. ‘Cumulative new providers’ in Table 6 sets out the number of ‘new’ providers estimated to be subsidised in each year i.e. those that are in their first three years of being in the Approved or Approved (fee cap) categories (excluding those previously regulated by HEFCE or DfE).

39. The government would contribute £600,000 of the 25% government subsidy to a new provider contribution in 2019/20. Table 7 outlines the amount of new provider contribution the government could contribute each year. These figures are based on an original outlay of £600,000, they are adjusted for the increase or decrease of new providers each year. For example, if the numbers of new providers increased by 54% as they do in 2021/22, the amount of new provider subsidy would increase proportionately with this (54%). Figures are also adjusted for inflation.

**Table 7. Indicative new provider subsidy government will contribute each year**

	19/20	20/21	21/22	22/23	23/24	24/25	25/26	26/27	27/28
% increase of new providers <sup>124</sup>	-	105%	54%	5%	2%	-1%	-4%	-4%	-4%
Govt contribution to new providers <sup>125</sup> (£m)	0.60	1.42	2.25	2.43	2.54	2.57	2.53	2.48	2.44

<sup>121</sup> Those HE providers entering the Approved and Approved (fee cap) categories from outside the regulated system or from the Registered – basic category.

<sup>122</sup> Count of “new providers” for three years - Providers are ‘new’ for the first three years of their registration – figures may not sum due to rounding

<sup>123</sup> The cumulative number of “new providers” in 2022/23 would be a count of the “new providers” in 2020/21 2021/22 and 2022/23.

<sup>124</sup> Calculates the % increase/decrease in the cumulative new providers each year, the increase/decrease in the number of providers that will be receiving the new provider subsidy

<sup>125</sup>Data is updated OBR RPIX estimates for Jan-Mar quarter – published in March 2017.

## Impact on business

### *Costs*

40. To relieve the burden of transitioning into the new system, providers will not begin to pay registration fees until academic year 2019/20.
41. “Total registration fees” in Table 5 above then represents an added cost to business.
42. There are also likely to be small familiarisation costs for businesses, reflecting the change in the regulatory architecture and added payment for registration.

### *Benefits*

43. The anticipated reforms will mean that the regulatory system is clearer and more efficient. The regulatory framework will be more flexible; to ensure that the burden of regulation is proportionate to the risk of a provider failing to meet the proposed baseline conditions.
44. The new provider subsidy limits barriers to entry, encouraging new high quality providers to enter the regulated sector. Creating more competition in the HE sector, increasing choice and improving student outcomes.
45. HE providers’ requirement to pay a registration fee to the OfS may incentivise them to hold the regulator to account. Increasing transparency and accountability of the OfS.

## Impact on the taxpayer

### *Costs*

46. There is no additional cost expected for the government from this option – by definition it would see providers meeting a greater proportion of the cost of regulating their activities.

### *Benefits*

47. Relative to the “do nothing” option, the cost saving for the government would be equivalent to the amount of OfS running costs covered by the sector – listed in Table 5 above as “total registration fees”.

## Wider impacts

48. The OfS will regulate registered HE providers in the interests of students as consumers of higher education, promoting greater competition, choice and standards in the higher education sector with the goal of delivering better outcomes and value for money for students and taxpayers who underwrite the system. This

should have wider benefits to the economy and society by increasing the supply and skills of graduates.

49. Within our analysis we have considered the possibility that providers will pass on any increased costs to students via fee rises. We judge this risk to be low.
50. Under the new regulatory framework, it is proposed that **Registered Basic** providers would pay a minimal fixed registration fee. This cost is judged to be minimal compared with the overall income that providers generate and so it is anticipated that the individual HE provider will absorb much of this cost without the need to pass it on to students.
51. Approved (fee cap) providers operating at the fee cap will be unable to pass the cost of registration fees on to their students as they cannot raise their fees above the fee cap. Instead, we anticipate that they will look to absorb these costs by either seeking efficiencies elsewhere or by seeking to expand other activities that would generate offsetting revenues e.g. through commercial activities. For some providers, moving into this category will enable them to access for the first time government grant funding, as set out in the consultation on the regulatory framework.
52. Approved category providers will be able to set their own fee levels, with students able to access student support of tuition fee loans of up to £6,000. This suggests that there might be greater scope for them to pass on some of the costs of registration to their students through their tuition fees, though to some extent this will be reduced by the cap on tuition fee loan their students will be able to access.
53. In responses received to the Government's initial (stage 1) consultation on OfS registration fees, a very small minority (6%) of respondents raised a concern that some providers, in particular Alternative Providers, could pass on the costs of registration fees to students<sup>126</sup>. This suggests that while a possibility, it is not held to be a particularly large concern amongst a wider reform programme that should support the best providers in being successful and improve student outcomes. And as before, providers will have other routes available to them by which they can manage such an increase in costs, for example efficiencies or generating revenue via other more commercial or fundraising activities.

## Specific impact tests and better regulation requirements

### Competition impact

54. The structure of the registration fees for OfS could have an impact on competition, even if this is relatively minor. However, as the design of registration fees is still in

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<sup>126</sup> Under the new regulatory framework, it is assumed that the majority of these providers would be registered in the Approved category



early stages of development and subject to a public consultation, it is difficult to provide any in-depth analysis.

55. The previous sections make assumptions on what the likely registration fees would be. Two aspects of the model are there to ensure it does not distort competition but instead works with the Government's broader reform programme to promote competition in the sector:

- c. Size of registration fees proportionate to number of students at the provider – thus everyone will face a similar burden relative to their size
- d. Costs of regulation of new providers subsidised by government during the first three years of operation

56. Thus the funding model will be designed with an explicit principle of not distorting competition.

### **Small and micro-business assessment**

57. A micro business is defined as having 0-9 employees and a small business 10-49 employees. In HE, the size of a provider is usually based on the size of its student population, as this is considered more relevant than employee numbers. For example, providers with a comparable number of employees may have significantly different student population sizes. However, for the purposes of the Small and Micro Business Assessment, we look at the number of employees at each provider.

58. 2015/16 HESA data shows that HEIs in England have on average 2,167 FTE employees. The smallest number of FTE employees at a single HEI was 80. Analysis of the Further Education workforce data for England report shows that the average college in England has 383 FTE staff. Therefore, we do not believe any HEI or FEC to be classified as a small business for this assessment.

59. According to a Business Innovation and Skills (2016) survey of Alternative Providers (APs), 75% of all APs employed ten or fewer FTE staff, and 95% of APs had 50 FTE employees or fewer. The AP survey included all APs, which in the new regulatory system would include many APs that may elect to remain unregistered. As we do not hold further detail on the split of small or micro businesses that will choose to enter the regulated system, we assume that 75% of all APs registered with the OfS, in any registration category, are classed as micro businesses and 20% classed as small<sup>127</sup>. Our expectation is that this is an overestimate.

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<sup>127</sup> Based on provider estimates we expect 238 APs to register with the OfS in the academic year 2018/19 (in all registration categories), based on this we can expect that 178 ( $238 \times 0.75$ ) of these APs are micro businesses and 48 ( $238 \times 0.2$ ) are small businesses.

60. For small and micro-sized businesses (up to 49 FTE employees) the burden of legislation can be disproportionately greater. It needs to be ensured that the burden is proportionate, so as to not disadvantage smaller businesses.
61. Smaller institutions are likely to be newer to the regulated system and so could potentially suffer disproportionately from the burden of regulation. To mitigate this and ensure that registration fees do not act as a barrier to entry, the government proposes to subsidise the registration fees for new providers in their first 3 years of operation, subject to overall departmental budgets and agreement with HM Treasury. Based on the proposed model, fees would also be proportionate to the number of FTE HE students attending the provider. So while this measure constitutes a new burden, it ensures that the burden is proportionate for smaller providers and may be additionally reduced for new providers.
62. Other measures in the Higher Education and Research Act<sup>128</sup> for example, improving the validation of degrees for new providers, reducing the burden of re-designation and creating a single entry gateway, will reduce the burden of existing legislation on smaller providers.
63. Full exemption of small or micro businesses from paying registration fees to the OfS could significantly reduce the effectiveness of the policy. It could undermine the policy objective of creating a level playing field for all registered HE providers and create the risk that providers fully exempted from fees have no incentive to act in the interests of students and the general taxpayer because they do not incur a direct financial cost from being registered.
64. In the HE sector, how recently a provider has been established is a more significant factor than the size of a provider for barriers to entry. Newer providers may find it difficult to enter the sector and compete with older, more established and well known HE providers. Therefore, the proposed new provider subsidy<sup>129</sup>, subsidising providers new to the Approved and Approved (fee cap) categories for a period of three years after entry into these categories, will be a more effective tool in reducing barriers to entry than exempting small and micro providers from registration fees.

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<sup>128</sup> The Higher Education and Research Act (2017)  
<http://www.legislation.gov.uk/ukpga/2017/29/contents/enacted/data.htm>

<sup>129</sup> Subject to overall departmental budgets and agreement with HM Treasury

<b>Title:</b> Deregulating higher education corporations and simplifying the privy council approval process  <b>IA No:</b> BIS009(F)-HE  <b>RPC Reference No:</b> RPC-BIS-3345(1)  <b>Lead department or agency:</b> Department for Education  <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>			
	<b>Date:</b> 11/12/17			
	<b>Stage:</b> Enactment			
	<b>Source of intervention:</b> Domestic			
	<b>Type of measure:</b> Primary Legislation			
<b>Summary: Intervention and Options</b>			<b>RPC Opinion: GREEN</b>	

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out	Business Impact Target Status
£1.3m	£1.2m	-£0.1m		

**What is the problem under consideration? Why is government intervention necessary?**

1) Higher Education Corporations (HECs), a subset of all Higher Education Providers (HEPs), face more stringent regulation than other publicly funded HEPs, which acts as a competitive barrier within the Higher Education (HE) sector. Intervening in this area will remove unnecessary and burdensome requirements on HECs that are currently specified within legislation.

2) All publicly funded HEPs are subject to a lengthy process of Privy Council approval when seeking to amend their governing documents, which is unnecessarily burdensome and restrictive. This process can be significantly streamlined to give publicly funded HEPs greater flexibility and control over their governance.

**What are the policy objectives and the intended effects?**

1) Deregulate the constitutional arrangements that govern HECs by removing unnecessary statutory requirements that are specified within legislation. This would give HECs greater freedom to respond to changes in the HE sector, supporting fairer competition in the sector and improving student outcomes.

2) Remove the requirement for most publicly funded HEPs to submit any changes to their governing documents to the Privy Council for approval, reducing their cost burden.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

**Option 0: Do nothing.** The disparity in constitutional arrangements set down in legislation that govern HECs will remain. The lengthy process of amending governing documents requiring Privy Council approval will remain. The restrictive constitutional arrangements for HECs and greater cost burden for all publically funded HEPs will remain, resulting in less competition in the HE sector and thus poorer outcomes for students.

**Option 1: Deregulate HECs.** Deregulate the constitutional arrangements set down in legislation that govern HECs so that they are subject to similar requirements to other publicly funded HEPs. Simplify the Privy Council approval process and remove the requirement for publicly funded HEPs (excluding chartered, statutory or civil corporations that are out of scope) to submit any changes to their governing documents to the Privy Council for approval. Responsibility for protection of the public interest in governing documents would transfer from the Privy Council to the Office for Students (OfS), who would be responsible for monitoring the governance of these providers, as well as any others on the register that are subject to a governance condition.

<b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> 2022					
Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope?		<b>Micro</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> N/A		<b>Non-traded:</b> N/A

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister:



Date: 11/12/17

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Deregulating higher education corporations and simplifying the privy council approval process

## FULL ECONOMIC ASSESSMENT

Price Base Year 2017	PV Base Year 2017	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0.7	High: 1.9	Best Estimate: 1.3

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant	Total Cost (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	0	0

### Description and scale of key monetised costs by 'main affected groups'

Direct costs of this measure are assumed to be negligible. Familiarisation costs are assumed to be negligible. The governing documents will be submitted each year to the OfS; they will only focus only on the changes linked to the protection of the public interest rather than all changes, which will reduce overall costs faced by the Government. The monetised benefits section (below) factors in the difference in costs to HEPs and Government between the current Privy Council approval process and the proposed streamlined process.

### Other key non-monetised costs by 'main affected groups'

Increased flexibility resulting from this change will give HECs the option to amend their governing documents. They could incur some direct costs if they do so for business reasons, but it is their choice rather than an imposition. There could potentially be a one-off increase in HEP burden to bring governing documents in line with the public interest principles set out by the OfS. However, the public interest principles are likely to be very similar to those currently in place, so this impact is likely to be minimal.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant	Total Benefit (Present Value)
Low	0	£0.0m	£0.7m
High	0	£0.2m	£1.9m
Best Estimate	0	£0.1m	£1.3

### Description and scale of key monetised benefits by 'main affected groups'

Benefits to deregulating HECs are largely intangible through greater flexibility, so have not been monetised. Removing the Privy Council approval process: Transitional benefits are assumed to be zero.

- HEPs: £140,000 cost saving annually,
- Government: £10,000 cost saving annually

### Other key non-monetised benefits by 'main affected groups'

Increased flexibility for the HECs to revise their governing documents, e.g. to respond to the changes in the HE sector more quickly and easily, supporting greater sector competition and improving student outcomes. The flexibilities associated with streamlining the governing document approval process will allow HEPs to take advantage of the business opportunities more quickly, making them more efficient, more competitive in the sector and able to deliver greater value for money.

### Key assumptions/sensitivities/risks

Discount 3.5

Governing documents will be submitted to the OfS on an annual basis as part of its overall responsibility for monitoring the financial sustainability, management and governance (FSMG) of HEPs with a governance condition, this will include the publicly funded HEPs (including HECs) previously captured by Privy Council oversight. The OfS will consult on, publish and maintain a list of 'public interest principles' against which it will monitor the governing documents of publicly funded HEPs.

Key assumed figures for monetised benefits can be found in the Evidence Base.

## BUSINESS ASSESSMENT (Option 5)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m: -£0.7
Costs: £0	Benefits: £0.1	Net: £0.1	

## Background

1. The higher education (HE) sector in England currently has a wide variety of providers. For the purposes of this Impact Assessment all of these providers are known as Higher Education Providers (HEPs), although this is not an official legal term.
2. There are currently 109 publicly funded HEPs that require Privy Council approval for their governing documents<sup>130</sup>. These providers take a variety of legal forms as listed below and summarised in Table 1:
  - a. **Higher Education Corporations (HECs)** – statutory institutions incorporated under provisions in the Education Reform Act 1988<sup>131</sup>. All receive direct funding<sup>132</sup> through the Higher Education Funding Council for England (HEFCE). There are currently 46 HEIs. Examples include: University of Bournemouth, Oxford Brookes University, Sheffield Hallam University.
  - b. **Chartered Corporations** – established by Royal Charter<sup>133</sup> with the agreement of the Queen. There are currently 30 such institutions. Examples include: University of Warwick, University of Bristol, University of Leeds.
  - c. **Statutory Corporations** – created through specific private Acts of Parliament. There are 4 statutory corporations – University of Durham, University of Newcastle, University of London and Royal Holloway.
  - d. **Civil Corporations** – created by public or private Acts of Parliament. There are 2 civil corporations – University of Oxford and University of Cambridge both established under common law.
  - e. **Designated Institutions** – HEPs that have been designated for HEFCE funding by the Secretary of State under provisions in the Education Reform Act 1988. There are 27 designated institutions. These currently consist of 25 companies, examples of which are Liverpool School of Tropical Medicine, Canterbury Christchurch University, University of Winchester; and 2 institutions that are not companies, which are the University of Chester (a registered charity and unincorporated association regulated by a Charity Scheme) and the Guildhall School of Music and Drama (a Department of the City of London Corporation).

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<sup>130</sup> As of November 2015

<sup>131</sup> As amended by the Further and Higher Education Act 1992.

<sup>132</sup> Among other things, this direct grant funding helps support the provision of more expensive courses (e.g. Medicine) and also support the Government's aim of widening participation.

**Table 1: Summary of different types of Higher Education Provider**

Type of HEPs	Number	Example
Higher Education Corporations	46	University of Bournemouth
HE Chartered Corporations	30	University of Warwick
HE Statutory Corporations	4	University of Durham
HE Civil Corporations	2	University of Oxford
HE Designated Institutions (companies)	25	Liverpool School of Tropical Medicine
HE Designated Institutions (not companies)	2	University of Chester

3. For the purposes of this Impact Assessment, being publicly funded refers specifically to direct grant funding through HEFCE (such providers' courses are automatically designated for student support funding). Among other things, this direct grant funding helps support the provision of more expensive courses (e.g. Medicine) and also support the Government's aim of widening participation. Private HEPs, whether they are able to access the student funding system or not, do not receive direct grant funding through HEFCE and so are out of the scope of this Impact Assessment.
4. For the purposes of this Impact Assessment, we have assumed further that providers who are currently publically funded will continue to receive public funding in the future, and therefore continue having to comply with a list of public interest principles.

## **Deregulate Higher Education Corporations**

5. Higher Education Corporation (HEC) is the legal status conferred on HEPs incorporated under the Education Reform Act 1988. The HEC status was created when the then polytechnics transferred from local education authority (LEA) funding to central government funding via HEFCE. Polytechnics were tertiary education teaching institutions offering advanced, usually vocational, courses across many fields at diploma and degree level; they were governed and administered at national level.

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<sup>133</sup> Royal Charters have been granted since the 13th century and at one time they were the only means of incorporating a body (turning it from a collection of individuals into a single legal entity). A body incorporated by Royal Charter has all the powers of a natural person, including the power to sue and be sued in its own right. As such Royal Charters were used to establish organisations of public interest such as cities or universities.

6. As independent universities, polytechnics were given responsibility for their own governance, management and staffing and, it was considered necessary to set down a detailed legislative framework within which they would operate. Also, as these new providers joined the HEFCE-funded sector, there was concern about how they would operate and their ability to maintain the reputation of the HE sector.
7. It was therefore considered necessary to retain an element of control over them and as a result, HECs became subject to tighter regulation than other differently constituted publicly funded HEPs. The relevant legislation sets out detailed requirements for the content of a HEC's governing documents, for example detailed provisions around the make-up, appointment and tenure of board members.
8. Now, over 20 years later, HECs are still subject to greater regulation than other publicly funded HEPs despite being well-established and financially stable. This puts them at a competitive disadvantage compared to other (sometimes newer) publicly funded HEPs which, due to being differently constituted (for example as chartered corporations or companies), are subject to less regulation.

## **Simplify Privy Council approval process**

9. Any publicly funded HEP must seek approval from the Privy Council<sup>134</sup> for any changes to its governing documents, no matter how minor. This applies to all HEPs that receive direct public funding, including HECs, but not private providers
10. The requirement for Privy Council approval recognises the fact that there is public interest in the governing documents of publicly funded HEPs, which it is currently the duty of the Privy Council to protect on behalf of the Government. To do so, the Privy Council normally takes advice from DFE (the Secretary of State being the relevant Privy Counsellor on HE matters) and the Charity Commission.
11. The governing documents of a publicly funded HEP include various provisions that are designed to protect the public interest. For example, to:
  - a. Ensure protection for students and staff;
  - b. Protect academic freedom<sup>135</sup>;
  - c. Promote equality and diversity;
  - d. Give the governing body the power to remove any of their members from office<sup>136</sup>;
  - e. Include a Statement of Primary Responsibilities of the governing body;
  - f. Ensure that its decision-making processes are free of any undue pressures from external interest groups, including donors, alumni, corporate sponsors and political interest groups.
12. There are currently 109 publicly funded HEPs that require Privy Council approval to amendments to their governing documents (see Background above).

13. As it stands, if any publicly funded HEP wants to amend its governing documents, the Privy Council approval process can take anything between 2 and 12 months depending on the nature of the change.
14. If a publicly funded HEP wants to make an amendment to its governing documents, it must go through a number of stages before the amendments are made official:
  - a. Proposed changes to governing documents are submitted informally to Privy Council for comments.
  - b. Proposed changes are circulated around Privy Council advisors for comments (for HE matters this involves DFE, providing advice on behalf of the Secretary of State as the relevant Privy Counsellor for HE matters, and also the Charity Commission).
  - c. Comments are collated and sent to the publicly funded HEP.
  - d. If required, this process will go back and forth as many times as necessary until an agreement in principle is reached, when the Privy Council will conclude that they have “no further comments”. In most scenarios, this process involves minimal involvement by the Government whose role is to simply check that the proposed amendments to the governing documents align with the public interest.
  - e. Formal resolution is proposed internally at the publicly funded HEP and voted upon by its governing body.
  - f. Proposed changes to the governing documents are submitted formally to the Privy Council who forward to their advisors (DFE and the Charity Commission) for advice. Again, in most scenarios, the changes to governing documents will not conflict with the public interest, so this stage of the process does not involve significant resource on the part of Government.
  - g. Once a final version of the governing documents is agreed by both the publicly funded HEP and the Privy Council, then the proposals are officially approved by the Privy Council.
15. The above process also requires legal time for the publicly funded HEP (including the costs of hiring solicitors) at each drafting stage of the process amending the governing documents. This is to ensure that any changes to the governing documents do not contradict UK law, for example employment, charity or equality laws. Although there is some cost to Government of checking that proposed

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<sup>134</sup> The Privy Council is the mechanism through which interdepartmental agreement is reached on those items of Government business which, for historical or other reasons, fall to Ministers as Privy Counsellors rather than as Departmental Ministers. The Privy Council formally advises the Queen on the exercise of the Royal Prerogative.

<sup>135</sup> This is defined by the Counter-Terrorism and Security Act 2015

<sup>136</sup> The governing body must remove a member from office if they breach the terms of their appointment.



amendments to the governing documents align with the public interest, most of the cost burden of this process falls on publicly funded HEPs in terms of legal advice associated with the above Privy Council process.

16. This lengthy process means that publicly funded HEPs are not well placed to respond quickly to changes in the HE sector, and may not be making the necessary minor amendments to their governing documents that could result in greater efficiency and competitiveness in the long term.
17. A potential example of this lengthy process preventing publicly funded HEPs from timely institutional change concerns board members of the governing body. Usually board members can serve two terms of four years or three terms of three years at a publicly funded HEP. However, if a publicly funded HEP happened to be facing a period of financial uncertainty and also losing some of their most experienced board members at the same time, there would be a case to extend these board member term times, in order to provide stable and continuous leadership through a difficult period. This would require an urgent change to their governing documents, but under the current system this would be delayed by the Privy Council approval process.
18. Another potential example concerns the passing of legislation, for example legislation making age discrimination illegal. In this case, publicly funded HEPs with long standing statutes in their governing documents concerning the age of board members, e.g. that board members must retire after a certain age, would be required by law to amend their governing documents. As they were going through the Privy Council process to amend their governing documents (before it was completed), they would technically be failing to comply with UK law despite complying with the process for doing so; in that time, they would be at risk of a judicial review.

## Summary

19. Overall there are two regulatory issues in this impact assessment that are having an impact on publicly funded HEPs:
  - a. HECs face more stringent regulation than other publicly funded HEPs, which acts as a competitive barrier within the HE sector.
  - b. All publicly funded HEPs are currently subject to a lengthy process of Privy Council approval when seeking to amend their governing documents, which is unnecessarily burdensome and restrictive.
20. The cumbersome nature of these regulations has been recognised in the past, both of these issues are currently ingrained in primary legislation so can only be overridden by further primary legislation.

21. Previous efforts to reduce the burden on publicly funded HEPs via non-legislative means were unsuccessful. In 2006, publicly funded HEPs were provided with guidance on how to amend their governing documents to be more flexible in the future. It was suggested that they undertake a full-scale review of their governing documents and simplify them where possible, making sure they aligned with the public interest. However, due to the time, effort and cost required by the publicly funded HEPs to undertake the full scale review, very few chose to do so at the time.

## **Rationale for intervention**

22. In the absence of legislative change, the disparity in legislative requirements between HECs and other publicly funded HEPs will remain. Being subject to more stringent regulatory control puts HECs at a competitive disadvantage, reducing competition in the HE sector and leading to sub-optimal outcomes.

23. In the absence of government intervention, all publicly funded HEPs would have to undergo a lengthy Privy Council approval process every time they amend their governing documents. This process can be significantly streamlined to give most publicly funded HEPs greater flexibility and control over their governance.

24. However, a balance must be met between allowing publicly funded HEPs the flexibility to innovate and protecting the public interest. Given that these HEPs receive direct public funding it is necessary to maintain some oversight of their governing documents to ensure that taxpayers' money is being used responsibly.

## **Policy objective**

### **Office for Students (not covered in this impact assessment)**

25. One of the overarching policy objectives of the Higher Education and Research Act (HERA) is to simplify the operating environment of publicly funded HEPs, including consolidating the monitoring of financial sustainability, management and governance (FSMG) into the Office for Students (OfS).

26. Establishing the Office for Students will transfer the existing HEFCE and Office for Fair Access (OFFA) powers to the OfS and also give them the powers to attach regulatory conditions to providers that enter the system. The OfS would be responsible for the regulatory requirements of higher education including monitoring FSMG as well as quality assurance, widening participation, data and information requirements.

27. Responsibility for the public interest in the governing documents of publicly funded HEPs will transfer from the Privy Council to the OfS. The OfS will consult on, publish and maintain a list of 'public interest principles' against which it will in future monitor the governing documents of publicly funded HEPs. The OfS may also use aspects of this list in setting governance conditions for other HEPs, however this is out of scope

for this IA. Before publication the OfS will consult Government, the sector as a whole, and other relevant stakeholder, such as the Charity Commission, the Privy Council, the Office for the Independent Adjudicator (OIA) and the Committee of University Chairs (CUC). This exercise will update and modernise the current set of 'public interest principles' drawn up in 2006 and clarify expectations.

28. More detail on the OfS can be found in the OfS impact assessment.

## **Deregulate Higher Education Corporations**

29. As a part of the overall HERA package, this policy seeks to deregulate the constitutional arrangements set down in legislation that govern HECs: their powers, their requirements on the content of their governing documents and their power to dissolve. This essentially means removing unnecessary statutory requirements on HECs that are specified within legislation. It is not appropriate to treat HECs differently to other publicly funded HEPs as they are mature institutions that no longer require the level of prescriptive regulation that was thought necessary in 1992. This would place HECs on a more equitable footing with other publicly funded HEPs that are incorporated under more flexible constitutional arrangements. This will give HECs greater freedom to innovate, take advantage of new business opportunities when they arise and to respond to changes in the HE sector, so supporting greater sector competition and improving student outcomes.

## **Simplify Privy Council approval process**

30. This policy seeks to remove the requirement for most publicly funded HEPs (including HECs) to submit any changes to their governing documents to the Privy Council for approval. The current process for Privy Council approval can be lengthy, costly and can slow down institutional change. This can put publicly funded HEPs at a disadvantage when competing with private HEPs that have more flexible constitutions that allow them to approve changes to their constitutions through their own internal approval processes. The policy aims to transfer responsibility for the protection of the public interest in governing documents from the Privy Council to the OfS as part of its overall responsibility for monitoring the financial sustainability, management and governance (FSMG) HEPs. Under the new system, publicly funded HEPs that want to amend their governing documents, after legal advice and drafting, would only have to propose a formal resolution internally to be voted upon by their own governing body. The responsibility for assuring the HEPs governing documents align with the public interest would lie with the Office for Students (OfS) who would monitor them annually (see Office for Students above).

31. These proposals will apply to 73 of the 109 publicly funded HEPs that are under the purview of the Privy Council. Publicly funded HEPs that are incorporated by Royal Charter or as statutory or civil corporations will still require formal Privy Council approval.

32. Royal Charters (and amendments to them) are granted by the Queen. There are around 600 bodies incorporated by Royal Charter across a wide spectrum of sectors including, for example, engineering, accountancy and architecture; only 30 of these are publicly funded HEPs. Consequently, using the HE Bill to override the Privy Council approval process of governing documents for these publicly funded HEPs could have significant and widespread ramifications if we were deregulating this process for some Chartered Corporations and not others. It would set a precedent that others may push to follow, potentially creating tensions with other parts of government, who may not think this is suitable for their sectors, and significant additional work across government.
33. There are six publicly funded HEPs that are statutory or civil corporations created by private Acts of Parliament or recognised by a public act (in the case of the Universities of Oxford and Cambridge). Overriding the Privy Council approval process for these bodies would complicate the HE Bill and delay its passage. Inviting the relevant institutions to petition for their own legislative changes to remove the mechanisms for Privy Council approval of governing documents would not carry this risk and allows them to decide whether they wish to continue to be subject to Privy Council oversight. DfE would support any such petition and work with the institutions to bring about the change.

## Description of options considered

34. **Option 0: Do nothing.** The disparity in constitutional arrangements set down in legislation that govern HECs will remain. The lengthy process of amending governing documents requiring Privy Council approval will remain.
35. **Option 1: Deregulate Higher Education Corporations and simplify Privy Council approval process.**
- Deregulate the constitutional arrangements set down in legislation that govern HECs so that they are subject to similar requirements as other publicly funded HEPs.
  - Remove the requirement for publicly funded HEPs (excluding chartered, statutory or civil corporations) to submit any changes to their governing documents to the Privy Council for approval.

## Analysis of Option 0: Do nothing

36. The disparity in constitutional arrangements set down in legislation that govern HECs will remain. The lengthy process of amending governing documents requiring Privy Council approval will remain.

## *Costs*

37. There would be no additional direct costs to institutions, government or students. However, HECs would continue to face disparity in legislative requirements compared to other publicly funded HEPs, which is an indirect cost of keeping current legislation unchanged. Also publicly funded HEPs would continue to submit amendments to their governing documents to the Privy Council. This can be a time consuming process which can sometimes be lengthened further if the amendments are substantial or complex. The Privy Council clearance process ensures protection of the public interest; however, this can be achieved in a less burdensome way. Some HEPs may be choosing not to amend their governing documents because of the cost and are therefore choosing to work within or around out-dated provisions, which is not in the best interests of the business or students.

## *Benefits*

38. There would be no additional benefits to institutions, students or Government.

# **Analysis of Option 1**

## **Deregulate Higher Education Corporations**

### *Costs*

39. There could be some direct costs (legal advice etc.) to institutions that amend their governing documents as a consequence of their greater freedom and flexibility. Importantly though, this deregulation will give HECs the option, so rationally they would only choose to amend their governing documents if the benefits of doing so outweighed the associated costs. This policy aims to make the regulatory environment faced by HECs as similar to that faced by other publicly funded HEPs as possible. The environment that HECs operate within will not change; they will just be subject to less stringent regulation, so we would expect familiarisation costs to be negligible and, as such, they are assumed to be zero.

### *Benefits*

40. HECs will be subject to similar regulatory requirements to other differently constituted HEPs, hence competition in the HE sector will not be distorted by the constitutional arrangements set down in legislation that currently govern HECs (i.e. their powers, their requirements on the content of their governing documents and their power to dissolve).
41. This will increase the flexibility that HECs have to revise their governing documents to meet their needs without the need to go through the current unnecessary and burdensome prescriptive processes. Increasing the flexibility that HECs have to revise their governing documents will allow them to meet their needs better. For

example, they will be able to respond to changes in the HE sector more quickly and easily, which will support greater sector competition and improve student outcomes.

42. Another aspect of the changes is to provide greater flexibility for a HEC to detail its own powers and shed light on the current perceived lack of clarity in which HEC's powers are set out. This will address the perceived problems around the powers of HECs that can create difficulties when HECs seek to, for example, raise capital, engage in joint venture activities (as potential funders question their powers) or engage in interest rate hedging arrangements. The powers of HECs are more limited than those of chartered corporations or companies, which have the powers of a natural person. As HECs are subject to public administrative law, they may exercise only those powers that are set out in legislation rather than being able to exercise all the powers of a natural person. Even though legislation provides HECs with the powers they need to meet their objectives, it goes on to set out a long list of specific powers, which is what creates the confusion and uncertainty. Therefore, this clarity on powers will be beneficial from a business perspective.

## **Simplify Privy Council approval process**

### *Costs*

43. There could potentially be a one-off cost to publicly funded HEP to bring governing documents in line with the 'public interest principles' set out by the OfS. However, this impact is likely to be minimal as the 'public interest principles' are likely to be very similar to those currently in place and, following the OfS review to modernise these, may be fewer in number. In advance of publishing a list of 'public interest principles', the OfS will consult Government, the sector as a whole and other relevant stakeholders. If any of the revised principles included were new there would be a reasonable period for adjustment to make the changes, such as when the HEP in question was next updating its governing documents, so avoiding unnecessary cost.
44. Overall, shedding light on any publicly funded HEP governing documents that do not fully comply with OfS' 'public interest principles', and then requiring them to update them accordingly, would have a positive long term impact aligned with the public interest.
45. No direct costs to students or Government would be expected. The reduction in costs to Government, in terms of the difference between the proposed new system and the current system, is estimated in the benefits section below. The overall government resource required to make sure that the governing documents of publicly funded HEPs align with the public interest will be reduced by the proposed changes compared to the system currently in place.

## *Benefits*

46. The current process of Privy Council approval for amendments to governing documents can be lengthy, costly and can slow down institutional change, potentially putting publicly funded HEPs at a disadvantage when trying to compete with other HEPs that have more flexible constitutions. Two specific examples of how the Privy Council approval process can slow down institutional change can be found in the Background section. The freedoms and flexibilities this deregulation will bring about will enable these publicly funded HEPs to adapt and innovate more quickly to take advantage of business opportunities thus making them more competitive in the sector.
47. There are many reasons why a publicly funded HEP may need to amend its governing documents. These include:
- a. To increase the maximum length of appointment for board members to retain relevant experience when dealing with a period of instability;
  - b. To make changes in trust fund provisions to allow income to be utilised to maximum effect;
  - c. To keep governance consistent with external guidance and the expectations of regulatory bodies;
  - d. To ensure compliance following changes in the law (e.g. to remove age discriminatory provisions);
  - e. To confer University Title<sup>137</sup>.
48. The above examples provide some insight into why a publicly funded HEP would want to amend its governing documents and the various benefits it could receive from doing so. These benefits are difficult to quantify; however, they include:
- Enhancing stability during periods of turbulence within the HEP;
  - Freeing up income to allow for greater investment;
  - Meeting the 'public interest principles';
  - Avoiding costly legal disputes;
  - Developing their University brand.
49. However, it is possible to quantify the **benefit to publicly funded HEPs** of no longer being subject to the Privy Council approval process to some extent, as set out below:
- a. Estimated legal fees for a publicly funded HEP on a typical straightforward Privy Council case would be between £2,000 and £5,000; however, a complicated

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<sup>137</sup> University Title is the right for institutions to use the title 'University' or 'University College' in their name.

case could go as high as £25,000 (though these are relatively rare). These figures refer to the legal fees associated with the Privy Council process only. They do not include legal fees that would be incurred from a governance change regardless of whether or not this needed to be approved by the Privy Council. Essentially if a publicly funded HEP wants to amend its governing documents, regardless of the Privy Council process, they would require legal advice to make sure their changes comply with the law, including employment, charity and equality laws.

- b. As discussed earlier, not all publicly funded HEPs are within scope of these proposals. Those incorporated by Royal Charter and statutory or civil corporations (36 of the 109 publicly funded HEPs) will still require formal Privy Council approval unless they petition for changes to their respective Acts to remove the mechanisms for Privy Council approval of their governing documents. DFE would support them in doing so.
- c. The Privy Council receives around 50-70 requests for changes to governing documents each year. For the purposes of this Impact Assessment, we assume an average of 60. We also assume that the aforementioned 36 publicly funded HEPs will still be subject to the Privy Council approval process, so will not benefit from the proposed changes to legislation;
- d. Assuming that these 36 publicly funded HEPs (which represent a third of the 109 publicly funded HEPs) account for a similar same share of total requests we can then assume that **40 requests** for changes to governing documents each year will no longer be subject to the Privy Council approval process<sup>138</sup>.
- e. We assume that the average cost to a publicly funded HEP is **£3,500** (half way between the £2,000 and £5,000 seen above), although this may be an underestimate as in rare cases this could even go as high as £25,000.
- f. Thus the benefit to publicly funded HEPs can be estimated as **£140,000 each year** (£3,500 x 40 = £140,000).
- g. A sensitivity analysis of £2,000 as a minimum and £5,000 as a maximum per request to change governing documents is included. This results in a low estimate of £80,000 and a high estimate of £200,000<sup>139</sup>.

## Table 2: Annual estimated benefits to publicly funded Higher Education Providers

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<sup>138</sup> With two thirds of providers in scope, the expected number of requests which would no longer required Privy Council approval is  $60 \times \frac{2}{3} = 40$

<sup>139</sup> Lower bound estimate of £80,000 is equal to  $40 \times £2,000$ . Upper bound estimate of £200,000 is equal to  $40 \times £5,000$ .



Average number of requests each year	Number of publicly funded HEPs in scope	Average number of requests in scope	Average legal cost of complying with process	Total benefit to publicly funded HEPs in scope
60	73 out of 109 (67%)	$60 \times 0.67 = 40$	£3,500	$£3,500 \times 40 =$ <b>£140,000</b>

50. There is also likely to be **savings for the taxpayer due to reduced Privy Council cost:**

- a. The Privy Council receives around 50-70 requests for changes to the governing documents each year. For the purposes of this Impact Assessment, we assume an average of 60. Although it is possible that a publicly funded HEP may make more than one request in a year this is unusual, so we have assumed that a publicly funded HEP does not make more than one request per year; this is an average of 60 across the 109 publicly funded HEPs. These changes range from simple word changes, for example, changing references to ‘chief executive’ to ‘principal’, to complex changes involving, for example, a Supplemental Charter to significantly revise a Royal Charter. At present all changes must be submitted to the Privy Council for approval.
- b. These changes have to be submitted to the Privy Council for informal comment and subsequently formal comment. On both occasions the Privy Council currently seeks views from DFE officials.
- c. It is assumed that each request is considered twice by DFE and twice by the Privy Council. Assuming an average of 60 requests, this implies at least 120 individual ‘considerations’ by the Privy Council and at least 120 individual ‘considerations’ by DFE, a total of 240. This is likely to be an underestimate as some more complex issues may require more ‘considerations’ by either DFE or the Privy Council.
- d. In the new system, the OfS will review the governing documents of any HEPs with a governance condition as part of their annual monitoring of FSMG. For providers that need to comply with the list of public interest principles, the OfS will focus only on changes, including those linked to the ‘public interest principles’. It may be that providers have not made any changes in these areas and, because publicly funded HEPs will be required to inform the OfS if they have made any changes to their governing documents over the previous year when submitting their FSMG documents, there would be no more than one ‘consideration’ per provider. Publicly funded HEPs will no longer have to submit their governing documents to Government every time they make a change, but instead the OfS will only review them once a year, if changes have been made.

- e. Under the new system, we assume that the degree of interaction between publicly funded HEPs and the OfS will be less than is currently the case with DFE. Accordingly, we therefore assume that each request is considered once by the OfS (compared to twice by DFE). **Assuming that, on average, 60 requests are received each year this implies that the OfS will manage 60 individual ‘considerations’ each year.**
- f. Under the new system the Privy Council, would only be required to consider requests from 39 (approximately one third) of the 109 publicly funded HEPs<sup>140</sup>. Assuming that these 39 publicly funded HEPs account for a third of the total requests submitted, this would imply<sup>141</sup> they submit 20 of the 60 requests which are assumed to be received each year. **Assuming that the degree of scrutiny by the Privy Council remains unchanged under the new system, this implies a total of 40 ‘considerations’ managed by the Privy Council.**<sup>142</sup>
- g. Overall, the changes could result in a **reduction from 120 to 40 ‘considerations’ by the Privy Council and 120 ‘considerations’ by DFE to 60 ‘considerations’ under the new OfS mechanism**<sup>143</sup>.

**Table 3: Resource saving of reducing “considerations by government”**

Current System		New System
120 ‘considerations’ by DfE	→	60 ‘considerations’ by OfS
120 ‘considerations’ by Privy Council	→	40 ‘considerations’ by Privy Council
Total: 240 ‘considerations’ by Government	→	<b>Total: 100 ‘considerations’ by Government</b>

- h. Privy Council estimate that all the cases of this kind (i.e. the average of 60 requests a year) take up approximately 10% of a manager’s time and approximately 15% of a Higher Executive Officer’s (HEO) time, on average. For DFE, the equivalent figure is approximately 10% of an HEO’s time. Assuming the manager’s salary to be £51,460 and the HEO’s salary to be £31,780, the

<sup>140</sup> Chartered, statutory and civil corporations will still be required to submit all changes to their governing documents to the Privy Council for approval. Under the new system DFE will not comment on the detail of the changes as this will be picked up by the OfS in annual monitoring.

<sup>141</sup> We are making the implicit assumption here that publicly funded HEPs still requiring Privy Council approval to make governance changes are as equally likely to submit a request as those publicly funded HEPs which do not longer need to do so.

<sup>142</sup> In assuming the same degree of scrutiny we are assuming here that each request to the Privy Council still requires the same amount of resource as for two individual ‘considerations’.

<sup>143</sup> DFE and OfS ‘considerations’ are assumed to be of equal resource for the purposes of this calculation.

approximate cost of a “consideration by the Privy Council” and a “consideration by DFE” can be calculated.

**Table 4: Assumptions of resource saving across government calculation<sup>144</sup>**

Category	Assumption
Manager's salary	£51,460
Higher Executive Officer (HEO) salary	£31,780
Privy Council total resource spent on the Privy Council approval process each year	10% of a manager's time 15% of a HEO's time
DFE total resource spent on the Privy Council approval process each year	10% of a HEO's time

- i. The total resource cost for the Privy Council, under the current system, is estimated to be £11,880<sup>145</sup>. Assuming the number of 'considerations' handled by the Privy Council is approximately 120 this equates to an estimated cost per 'consideration' of around £100.<sup>146</sup>

**Table 5: Cost of a 'consideration' by the Privy Council**

Total employee salary cost to Privy Council each year	Assumed number of considerations by Privy Council each year	Cost per 'consideration' by the Privy Council
<b>£11,880</b>	<b>120</b>	<b>£100</b>

- j. The total resource cost for DFE, under the current system, is estimated to be £3,807<sup>147</sup>. Assuming the number of 'considerations' handled by DFE is approximately 120, this equates to an estimated cost per 'consideration' of around £35.<sup>148</sup>

<sup>144</sup> Grade 7 and Higher Executive Officer's salaries are assumed to be the equivalent of the minimum salary for DfE employees at this level

<sup>145</sup>  $[10\% \times G7 \text{ (earning } \pounds 51,460) + 15\% \times \text{HEO (earning } \pounds 31,780)] \times 1.198 \text{ non-wage labour costs (an additional } 19.8\%) = \pounds 11,880.$

<sup>146</sup>  $\pounds 11,880 \text{ divided by } 120 = \pounds 99.0, \text{ rounded up to } \pounds 100 \text{ for the purposes of this IA.}$

<sup>147</sup>  $[10\% \times \text{HEO (earning } \pounds 31,780)] \times 1.198 \text{ non-wage costs (an additional } 19.8\%) = \pounds 3,807.$

<sup>148</sup>  $\pounds 3,807 \text{ divided by } 120 = \pounds 31.7, \text{ rounded up to } \pounds 35 \text{ for the purposes of this IA.}$

**Table 6: Cost of a ‘consideration’ by DFE**

Total employee salary cost to DFE each year	Number of considerations by DFE each year	Cost per ‘consideration’ by DFE
£3,807	120	£35

- k. Under the current system, the total cost of 240 ‘considerations’ by Government in the current Privy Council approval process is estimated to be £16,200. This comprises £12,000 cost to the Privy Council and £4,200 to DFE, as discussed above.<sup>149</sup>
- l. Under the new system, the total cost of 100 ‘considerations’ by Government (assuming the cost per ‘consideration’ for the OfS is the same as for DFE) is estimated to be £6,100. This comprises £4,000 cost to the Privy Council and £2,100 to the newly formed OfS.<sup>150</sup>
- m. The total benefit (cost saving) to Government per year: £16,200 - £6,100 = £10,100. Rounded to £10,000 for simplicity.
- n. A sensitivity analysis of plus or minus 50% is included to demonstrate the wide variability in government resource required to deal with a request to change governing documents depending on the nature of the change. This results in a low estimate of £5,000 and a high estimate of £15,000.
- 51. The total benefits to HEPs (£140,000) and government (£10,000) total approximately £150,000 each year.** These annual benefits are modelled over a 10-year period to reach a Net Present Value.

<sup>149</sup> Cost to Privy Council is 120 x £100 = £12,000 approx. Cost to DfE is 120 x £35 = £4,200 approx. Due to rounding these estimates do not correspond exactly to the figures in Tables 5 and 6.

<sup>150</sup> Cost to Privy Council is 40 x £100 = £4,000 approx. Cost to OfS is 60 x £35 = £2,100.

**Table 7: Total benefit (cost saving) to government per year**

New System		Old System	
Privy Council 'considerations' each year	120	Privy Council 'considerations' each year	40
Cost of a 'consideration' by the Privy Council	<b>£100</b>	Cost of a 'consideration' by the Privy Council	<b>£100</b>
Total cost of Privy Council 'considerations' each year	<b>£12,000</b>	Total cost of Privy Council 'considerations' each year	<b>£4,000</b>
DFE 'considerations' each year	<b>120</b>	OfS 'considerations' each year	<b>60</b>
Cost of a 'consideration' by DFE	<b>£35</b>	Cost of a 'consideration' by the OfS	<b>£35</b>
Total cost of DFE 'considerations' each year	<b>£4,200</b>	Total cost of OfS 'considerations' each year	<b>£2,100</b>
Total cost of Privy Council and DFE 'considerations' each year	<b>£16,200</b>	Total cost of Privy Council and OfS 'considerations' each year	<b>£6,100</b>
<b>Total benefit (cost saving) to government per year</b>		$£16,200 - £6,100 = £10,100 \approx \underline{\underline{£10,000}}$	

## Factors affecting both deregulatory measures

### Costs

52. It should be noted there could be a minimal amount of double counting in the unlikely case that a HEC wanted to update its governing documents in response to both the deregulation of the constitutional arrangements and also the change to the Privy Council approval process. Once again, and importantly, it is their choice rather than an imposition.

### *Benefits (monetised and non-monetised)*

53. Publicly funded HEPs will benefit from the transparency associated with the fact that the OfS will consult on, publish and maintain a list of 'public interest principles' against which it will monitor these HEPs. Before publication the OfS will consult Government, the sector as a whole and other relevant stakeholders, such as the Charity Commission, the Privy Council, the Office for the Independent Adjudicator (OIA) and the Committee of University Chairs (CUC). These 'public interest principles' will provide clarity that these HEPs are expected to include in their governing documents.

## **Risks and assumptions**

54. Governing documents will be submitted to the OfS on an annual basis as part of its overall responsibility for monitoring the financial sustainability, management and governance (FSMG) of any HEPs subject to a governance condition. This includes HEPs in receipt of public funding. These HEPs will no longer have to submit their governing documents to Government every time they make a change, but instead once a year, with the OfS only reviewing them if changes have been made. This means that publicly funded HEPs will be free to make changes to their governing documents (by proposing a formal resolution internally to be voted upon by the governing body) at any point throughout the year. This could imply that there is a risk that the governing documents would be subject to less scrutiny and changes that are against the public interest could be made in the short term.

55. However, this risk will be mitigated for the following reasons:

- a. The OfS will consult on, publish and maintain a list of 'public interest principles' against which it will monitor publicly funded HEPs in receipt of public funding. These 'public interest principles' will provide clarity and transparency of what these HEPs are expected to include in their governing documents.
- b. As the regulator for the HE sector the OfS will be best placed to consider publicly funded HEPs' governing documents in the context of its wider monitoring of HEPs overall quality and FSMG. This is not possible in the current Privy Council process.
- c. As the vast majority of publicly funded HEPs are charities, members of their governing body will also be charity trustees so would be held personally and legally accountable, rather than the HEP as an entity, should they attempt to exploit the governing documents for short term gains.

56. The average cost to a publicly funded HEP of the current Privy Council approval process when amending their governing documents was assumed to be £3,500 (the

midpoint of the estimated range from £2,000 to £5,000<sup>151</sup>), however in rare cases the cost could be as high as £25,000. We have assumed conservative estimates in the calculations, but there is scope for a much larger benefit in specific cases that would have required much more detailed legal advice.

## **Rationale and evidence that justify the level of analysis used in the IA (proportionality approach)**

57. Both measures in this Impact Assessment have relatively simple aims of reducing the regulatory burden, firstly on HECs and secondly on publicly funded HEPs that wish to amend their governing documents (excluding chartered, statutory or civil corporations).
58. The first measure aims to deregulate HECs so that they are subject to the similar regulatory requirements as other, differently constituted, publicly funded HEPs, and hence is clearly deregulatory.
59. Publicly funded HEPs (including HECs) will still be required to produce governing documents; the second measure would simply remove the lengthy process to have amendments approved by Privy Council. There could potentially be a one-off increase in institutional burden to bring governing documents in line with the 'public interest principles' set out by the OfS. This impact is likely to be minimal as the 'public interest principles' are likely to be very similar to those currently in place and, following the OfS review to modernise these, may be fewer in number. However, shedding light on any publicly funded HEP governing documents that do not fully comply with OfS' 'public interest principles', and then requiring them to update them accordingly, would certainly only have a positive long term public interest impact. The likely minimal impact of this cost justifies the level of analysis used in this section of the Impact Assessment.

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<sup>151</sup> Informal estimate provided from historical cases.



<b>Title:</b> New powers to enter and inspect higher education providers <b>IA No:</b> BIS004(F)-HE <b>RPC Reference No:</b> RPC-3335(1)-BIS <b>Lead department or agency:</b> Department for Education <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>			
	<b>Date:</b> 11/12/17			
	<b>Stage:</b> Enactment			
	<b>Source of intervention:</b> Domestic			
	<b>Type of measure:</b> Primary Legislation			
<b>Summary:</b> Intervention and Options			<b>RPC Opinion:</b> GREEN	

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out	Business Impact Target Status
£0m	£0m	£0m		

**What is the problem under consideration? Why is government intervention necessary?**

Currently neither the Department for Education (DfE) nor its partner organisations have a statutory right to enter and inspect higher education (HE) providers if it is suspected that a provider has committed a serious breach of conditions of receipt of funding or designation. Investigation visits to HE providers have been with permission and by prior arrangement, which reduces the opportunity for investigators to obtain compelling evidence. A power is needed to enable BIS and the Office for Students (OfS), the proposed new regulator, to enter and inspect, if there is a reasonable suspicion a provider has committed a serious breach of conditions of OfS funding, registration or the Student Support Regulations. This would increase investigators' ability to obtain compelling evidence.

**What are the policy objectives and the intended effects?**

This policy aims to enable more effective investigation and increase the likelihood of DfE or the OfS obtaining evidence where it is suspected a HE provider has committed a serious breach of conditions of OfS funding, registration or the Student Support Regulations. The aim is to allow serious breaches to be tackled as swiftly and effectively as possible, safeguarding the interests of students and the taxpayer, and protecting the sector's reputation. The intended effects are greater compliance with conditions (deterrent effect), increased likelihood of serious breaches being uncovered and appropriate sanctions being applied to the provider, better safeguarding of public money, better protection for students and the reputation of the sector.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

**Option 0:** Do nothing.

**Option 1:** Introduce primary legislation to create new powers to enable DfE and the Office for Students to enter and inspect HE providers, if it is suspected that the provider has committed a serious breach of conditions of OfS funding, registration or the Student Support Regulations. The policy objectives can be achieved through Option 1. In the absence of primary legislation, guidance for 'Alternative Providers' (APs) has been strengthened to make it a condition of designation for student support funding that APs must allow BIS immediate access where BIS has reasonable cause to suspect fraud or irregularity has occurred. However, there is no power to enforce this condition of immediate access, and a provider may refuse entry. If no action is taken, the ability of BIS to investigate will be no be as effective as with Option 1, and public funding and the student interest will not be as well safeguarded.

<b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> Two years after launch				
Does implementation go beyond minimum EU requirements?			N/A	
Are any of these organisations in scope?			<b>Micro</b> Yes	<b>Small</b> Yes
			<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b>	
			<b>Non-traded:</b>	

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister:



Date: 11/12/17

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** New powers to enter and inspect higher education providers

## FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: 0
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Cost (Present Value)</b>
Low					
High					
<b>Best Estimate</b>	0		0		0
<b>Description and scale of key monetised costs by 'main affected groups'</b>					
N/A - Because the policy change alters only minimally the scope of relevant investigations, or of the providers who may be subject to them, we expect that the number and nature of inspections which would go ahead under the proposed policy to be highly similar to those which would go ahead without the policy. The primary difference is that the inspection is carried out sooner. Thus, additional costs to providers who are not breaching their conditions of receipt of public funding and/or designation are expected to be negligible (while additional costs to noncompliant providers are not relevant).					
<b>Other key non-monetised costs by 'main affected groups'</b>					
N/A - see above.					
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Benefit (Present Value)</b>
Low					
High					
<b>Best Estimate</b>	0		0		0
<b>Description and scale of key monetised benefits by 'main affected groups'</b>					
N/A – Because it is not possible to reliably estimate the extent of past, present or future non-compliance with conditions of funding and/or designation, it is not possible to quantify the benefits, which are discussed qualitatively, with reference to quantified examples from past investigations.					
<b>Other key non-monetised benefits by 'main affected groups'</b>					
By ensuring the maximum amount and quality of relevant evidence can be collected when investigators have established reasonable suspicion of a breach of conditions of OfS funding, registration or the Student Support Regulations, this policy will enable better identification and recovery of misused public funds, enable funds to be recovered more quickly and enable future payments to providers to be stopped if necessary. The policy may deter non-compliant behaviour and reduce reputational risk of the HE sector as a whole.					
Key assumptions/sensitivities/risks					<b>Discount rate (%)</b>
A potential risk of the policy is that it may encourage non-compliant providers to hide evidence 'as they go along', limiting the effectiveness of entry powers to achieve the main policy aim.					3.5

## BUSINESS ASSESSMENT (Option 6)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:0
Costs: 0	Benefits: 0	Net: 0	

## Problem under consideration

1. Currently neither DFE nor its partner organisations (e.g. the Higher Education Funding Council for England) have a statutory right to enter and inspect higher education (HE) providers if it is suspected that a provider has committed a serious breach of conditions of receipt of (direct or indirect) public funding and/or designation. Investigation visits to HE providers have been with permission and by prior arrangement, which allows an opportunity for a provider to interfere with or remove evidence prior to the visit. A key issue in investigating allegations of serious irregularities, including fraud and malpractice, has been the ability of DFE and its partner organisations to obtain compelling evidence of what is suspected may have happened.
2. Concerns about the practices of some 'alternative providers' of HE have underlined the need for powers to enter and inspect higher education (HE) providers if it is suspected that a provider has committed a serious breach of conditions of OfS funding, registration or the Student Support Regulations.
3. Around 100 'alternative providers' (APs) offering higher education (HE) in England have courses designated by the Secretary of State for student support. This means that students on these courses can (provided they meet other eligibility criteria) apply for government-funded financial support, including student loans which are used to pay their tuition fees. The Student Loans Company (SLC) pays the tuition fees directly to the provider on behalf of the student. Total expenditure on HE student support in the academic year 2013/14 was around £11.8 billion. Around £714 million (6%) of this expenditure was at APs.
4. From 2010/11 to 2013/14, the number of students accessing student support at Alternative Providers (APs) rose from 6,600 to 53,300 (including a 41% rise between 2011/12 and 2013/14). Over the same period, expenditure on students at APs increased from £52 million to £714 million (6% of the £11.8 billion total expenditure on HE student support in the academic year 2013/14).
5. Following this rapid expansion of the AP sector from 2010/11 to 2013/14, concerns arose relating to the practices of some APs, including around quality and value for money. In 2014, DFE and the National Audit Office (NAO) conducted a variety of investigations which found concerns at around 20 APs. These concerns included APs recruiting students in receipt of student support onto courses DFE had not approved, recruiting students who did not have the capability to complete their courses, and failing to register students with the awarding body.

6. The NAO published its report 'Investigation into financial support for students at alternative Higher Education Providers' in December 2014<sup>152</sup>. The report highlighted that "DFE has no rights of access to Higher Education Providers. This affects the extent to which it can investigate when concerns are raised".
7. The NAO report sets out that between 2012 and 2014, DFE suspended payments to 7 providers and their students while it investigated concerns that providers had enrolled students claiming student support for courses that DFE had not approved. The NAO also reported that:
  - DFE revoked all course designations with immediate effect for 1 provider where it concluded students had accessed support for unapproved courses but the provider had knowingly reported that the students were on approved courses (Guildhall College).
  - DFE concluded issues were substantiated at 2 providers and took steps to recover overpayments from providers and students (London Empire Academy and ICE Academy).
8. Currently DFE works with its partner organisations to investigate if an AP is suspected of breaching its conditions of designation. DFE has established a Rapid Response Investigation Team (RRIT) comprising key partner organisations (the Student Loans Company, Quality Assurance Agency, Government Internal Audit Agency and HEFCE) which investigates concerns. This typically involves one or more of the RRIT members visiting the institution concerned, with the consent of that institution, to gather evidence. RRIT investigations have resulted in a few cases in removal of the provider's designation for student support where the team has no confidence in the provider.
9. A key issue in investigating allegations of fraud and malpractice has been the ability of DFE and its partner organisations to obtain compelling evidence of what is suspected may have happened. It has been necessary to give notice of inspection and the consent of the provider has been required, which reduces the opportunity for investigators to obtain compelling evidence.
10. While the impetus for these powers has come from experiences with a small number of APs, it is considered that powers to enter and inspect should also apply to HEFCE-funded providers. While the risk appears lower in the HEFCE-funded sector, it still exists and a power of entry and inspection would increase effectiveness in investigating any serious breaches of conditions in future. In any case, under the

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<sup>152</sup> NAO (2014) *Investigation into financial support for students at alternative higher education providers* <https://www.nao.org.uk/wp-content/uploads/2014/12/Investigation-into-financial-support-for-students-at-alternative-higher-education-providers.pdf>

new regulatory system there will not be the same distinction between alternative providers and HEFCE-funded providers.

11. A key high-profile case of problems at a provider in the HEFCE-funded sector is that of London Metropolitan University (LMU). Inaccurate student data returns provided to HEFCE by the University meant that it had been receiving more funding than it was due. The investigation into these concerns was hampered by access issues. HEFCE's published statement<sup>153</sup> on its dealings with LMU states that HEFCE was unable to obtain the information it needed to further its investigations from the University 'for some time'. Access to this data was gained in February 2008. In July 2008, HEFCE notified the University that it intended to commission independent audit work on its data and the student record system. BDO Stoy Hayward were commissioned for this assignment, but they were unable to gain early access to the University. In September 2008, the HEFCE Board confirmed a reduction in funding to London Metropolitan University of £15 million for the year 2008-09. It subsequently decided to recover excess funding of £36.5 million paid for the years 2005-06, 2006-07 and 2007-08.

## Rationale for intervention

12. If these powers are not put in place, the ability of DFE and its partner organisations to act swiftly to root out malpractice will be limited and leaves open the risk of similar cases to the ones referenced above occurring again in the future. They will not be as well-equipped to protect public funding and the student interest. Higher education should deliver lasting value to graduates – and to the taxpayers underwriting the student loan system. These measures are a key part of ensuring appropriate protection for students and the taxpayer. Additionally, these measures will help protect the high reputation of the HE sector. The HE sector has been concerned at the reputational damage caused to HE in the UK by the actions of 'rogue' providers.

13. As described above, investigation visits to HE providers have had to be with permission and by prior arrangement, which reduces the opportunity for investigators to obtain compelling evidence. A statutory power in primary legislation is needed to enable DFE and the Office for Students (the proposed new regulator) to enter and inspect, if there is a reasonable suspicion a provider has committed a serious breach of conditions of OfS funding, registration or the Student Support Regulations. This would increase investigators' ability to obtain compelling evidence of what may have happened.

14. The Department has explored and put in place alternative safeguards to primary legislation where possible. Guidance for APs has been strengthened to make it a

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<sup>153</sup> HEFCE News Release (2009) *HEFCE's dealings with London Metropolitan University (LMU)*  
[http://www.hefce.ac.uk/news/newsarchive/2009/HEFCEs\\_dealings\\_with\\_London\\_Metropolitan\\_University/](http://www.hefce.ac.uk/news/newsarchive/2009/HEFCEs_dealings_with_London_Metropolitan_University/)

condition of specific designation that APs must allow DFE immediate access where it has reasonable cause to suspect fraud or irregularity has occurred. There is currently no power to enforce this condition of immediate access: rather, if, in a particular instance, access is not provided, DFE could exercise its discretion to apply a range of sanctions against the provider. As a practical matter, it is anticipated that in any case if a provider had committed fraud or serious malpractice, the provider would not permit access, and DFE currently has no enforceable legal power of entry and inspection.

15. In light of the problems explored above, these powers were proposed in the consultation paper *'Fulfilling our Potential: Teaching Excellence, Social Mobility and Student Choice'* which was published in November 2015<sup>154</sup>. The consultation paper set out that these powers are needed to allow serious breaches of conditions to be tackled as swiftly and effectively as possible. There was a small majority of consultation responses in favour of the proposed powers.
16. We do not expect these powers to be used except in extremis, and they are only ever likely to be applied to a few providers. However, it is considered important to have them in place to draw on when needed, and the existence of the power will in itself have a deterrent effect.

## Policy objective

17. The aim of this policy is to enable more effective investigation and increase the likelihood of DFE or OfS being able to obtain compelling evidence where it is suspected that an HE provider has committed a serious breach of conditions of OfS funding, registration or the Student Support Regulations<sup>155</sup>. The aim is to allow serious breaches to be tackled quickly and effectively, safeguarding the interests of students and the taxpayer, and protecting the reputation of the sector.
18. The powers would operate through associated powers of inspection attached to the power of entry, which would allow investigators to take copies of documents, seize records or computer equipment and require staff on the premises to give reasonable assistance in retrieving information. As a safeguard for the sector, DFE or OfS would need to obtain a court warrant to gain entry before the power could be exercised. The bar for a court warrant to be granted is high, with rigorous evidence requirements. This should ensure that exercise of the power is appropriately limited.

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<sup>154</sup> Page 64-65, paragraphs 7 and 8 (under heading 'Managing risk') of the HE Green paper *'Fulfilling our Potential: Teaching Excellence, Social Mobility and Student Choice'* published by BIS in November 2015.

19. We propose it would be a criminal offence if someone obstructs entry and/or inspection of an HE provider, and that a person guilty of this offence should be liable on conviction to a fine of up to £2,500. This would follow the approach to enforcement for school's inspections.

20. The intended effects of the policy are:

- Greater compliance by providers with due to deterrent effect
- Increased likelihood of serious breaches being uncovered and appropriate sanctions being applied to providers, potentially including criminal prosecutions if evidence of criminality is found
- More effective safeguarding of public money
- Better protection for students and for the reputation of the HE sector.

21. As set out above, the policy aim can only be achieved through primary legislation.

## **Background - Higher Education Providers**

22. The higher education sector in England currently has a variety of providers. The majority of universities still access some grant funding from the Higher Education Funding Council for England (HEFCE) as do some Further Education Colleges (as well as funding from the Skills Funding Agency). These levels of funding have, however, decreased as income from tuition fees has increased. HEFCE attaches conditions to the grant funding it provides.

23. Some providers do not receive grant funding from Government agencies (for policy development purposes categorised as Alternative Providers) but choose to apply to have a number of their courses designated as eligible for student support, meaning that course participants can, if they wish to, apply for government-funded financial support. For a course to be designated requires certain conditions to be met, which are set out in guidance.

24. A third group of providers are those that do not receive grant funding and do not have their courses designated for student support purposes – this may be because their courses are not eligible for student support (e.g. postgraduate provision) or because they have chosen not to become designated (even if their courses are eligible).

25. Under the new regulatory system there will not be the same distinction between alternative providers and HEFCE-funded providers, with more of a level playing field.

## Impact of Option 1

### Methodology

26. The majority of the impacts of the chosen policy are non-quantifiable, but the quantified examples from recent investigations cited below demonstrate that very substantial benefits may result from the policy. The policy's primary intention is to ensure the maximum amount and quality of relevant evidence can be gathered where there is a reasonable suspicion that a serious breach of conditions of OfS funding, registration or the Student Support Regulations has occurred or is occurring.
27. While we know what the outcomes of past investigations were, it is not possible to say to what extent the outcomes of those investigations would have been different if the authorities had had, and used, entry powers. Expected impacts are thus discussed largely qualitatively, with reference to the investigations which have occurred in recent years to provide context where appropriate.
28. What can be said is that Option 1 may substantially impact on protecting public funding as it is more likely that compelling evidence of serious breaches will be found. This may enable future payments to the provider to be stopped, and past payments to be recouped.

### Direct benefits

Improved identification of breaches leading to increased recovery of misused funds, and stopping of future payments

29. Option 1 may increase the amount of misused funds that can be recovered relative to the do-nothing scenario by increasing investigators' ability to obtain compelling evidence. It may also mean that any future scheduled payments can be stopped. In addition, it may mean a provider that would otherwise have been designated for future years, is not, and these future payments to the provider are not made. This is a direct but non-monetisable benefit, as we are unable to robustly estimate the extent of non-compliance with conditions of funding and/or designation, or the propensity of any provider to hide evidence if given the opportunity. In the absence of monetisation, we can provide some context for this benefit by briefly discussing the types of investigations that DFE and partner agencies have carried out in recent years and their outcomes.

#### *Past investigations*

30. Working with partner agencies, DFE investigated twenty alternative providers between 2012 and 2015 for suspected serious breaches of conditions of designation. We cannot know whether there was further compelling evidence which may have yielded any different results in these cases.



31. Investigating officials assessed the list of past cases and opined that in six cases, it is likely they would have attempted to use entry powers had they been available, based on what was known when it was established a (voluntary) inspection was needed for a given investigation.
32. The following example of a recent investigation from the December 2014 NAO report illustrates the considerable sums of money which can be involved. At the HE provider ICE Academy, DFE concluded that more than 1000 applicants had applied for student support at undesignated campuses following allegations in April 2013. £1.5 million in tuition fees and £5.4million in maintenance loans was overpaid. In terms of HEFCE-funded providers, the London Metropolitan University investigation referred to in the section below further illustrates the considerable sums which can be involved.

*Increased speed of recovery of misused funds*

33. A second benefit of the chosen policy is that it may enable faster recovery of overpayments to providers through eliminating the 'delay period' between the authorities requesting access to, and entering, the provider's premises. In other words, investigations may be conducted and potentially concluded more quickly.
34. The taxpayer benefit of recouping public money faster can be calculated by applying the social discount rate, pro-rated for the expected period of delay to recovery under the counterfactual, to the expected recovery amount. This assumes that the misused funds had a value to society of zero before being recovered, and once recovered would be allocated to some useful activity. As an example, if we can recover £1 million of wrongly-claimed student finance in sixty days, or we can recover it today, then we would prefer to recover it today (because an identical sum of money has a higher value today than in the future). Based on society's discount rate, 3.5% as per Green Book guidance, the £1 million in two months is worth approximately £994,360 to society today, so the benefit of the chosen policy option enabling recovery today rather than in two months would be £5,640.
35. Where eliminating the delay period would make a difference is in very serious cases which identify very large overpayments and/or where there might be very long delays between having reasonable cause to suspect conditions of OfS funding, registration or Student Support Regulations are being breached and being able to access the provider and collect evidence if there were no powers to enter.
36. A possible example of this scenario would be HEFCE's investigation into London Metropolitan University in 2008. Based on HEFCE's statement on the recovery of

funding from that university, and on its overview of the timeline of events<sup>156</sup>, we have inferred that the relevant 'delay period' between the point when the authorities may have had reasonable cause to justify entry under the proposed new policy, and actually gaining access with the consent of the university, was approximately eight months<sup>157</sup>. The repayment amount was ultimately determined to be around £36.5m, and was scheduled to be repaid in annual instalments between 2008/09 to 2012/13. Applying previous logic, if all of the payments in the schedule were to occur eight months earlier (as a result of the authorities hypothetically entering and collecting the required data rather than waiting eight months for access) it would have represented a hypothetical benefit of around £800,000 in 2015 terms. This example makes very simplifying assumptions, and shouldn't be taken to mean that entry powers would have yielded this amount of benefit in the LMU case, but demonstrates that the benefit of earlier repayment under the chosen policy could be large in more extreme cases in the future, the likelihood of which we are not able to reasonably estimate.

### *Speed of recovery from providers which cease operating*

37. Some providers under investigation may run into financial difficulties and cease operating in the course of the investigative period or afterwards, for reasons which may or may not be related to the investigation<sup>158</sup>. Increasing the speed of investigations may improve the government's recovery rate of misused funds in the case of providers which become insolvent, if it is able to halt ongoing funding and/or request and collect overpaid funds before the provider goes into administration. However, this would likely be more of distributional impact if the government successfully recovering overpayments before bankruptcy results in a reduction of proceeds available to legitimate creditors with legal claim to the provider's liquidated assets. The NAO report 'Investigation into financial support for students at alternative Higher Education Providers' published in December 2014<sup>159</sup> references DFE's investigation of Guildhall College. In August 2012 DFE concluded that the College had knowingly registered 281 out of 585 students on designated courses when the students were intending to study other, non-designated courses. In

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<sup>156</sup>

HEFCE News Release (2009) *HEFCE's dealings with London Metropolitan University (LMU)*  
[http://www.hefce.ac.uk/news/newsarchive/2009/HEFCEs\\_dealings\\_with\\_London\\_Metropolitan\\_University/](http://www.hefce.ac.uk/news/newsarchive/2009/HEFCEs_dealings_with_London_Metropolitan_University/)

<sup>157</sup> There were "requests for detailed explanations of discrepancies..." in May and June 2007. "Various communications and meetings over the next six to nine months resulted in five visits" in February and March 2008, and access to data was gained in February 2008.

<sup>158</sup> An inspection which hastens a provider's going into administration, perhaps by bringing to light funding condition breaches which, once known, jeopardise the providers' whole operations, would not be the cause of the provider's failure and thus a provider's failure in this scenario would not be considered as an impact of this policy.

<sup>159</sup> NAO (2014) *Investigation into financial support for students at alternative higher education providers*  
<https://www.nao.org.uk/wp-content/uploads/2014/12/Investigation-into-financial-support-for-students-at-alternative-higher-education-providers.pdf>

October 2012, DFE revoked the college's designation and the college judicially reviewed DFE. In July 2013 the Court ruled in DFE's favour. The College went into liquidation. Formal notice of £658,000 owed to DFE was lodged with the liquidator, but has not been recovered.

## Indirect benefits

### *Enter and Inspect as a deterrent for fraud*

38. The threat of entry and inspection without warning (and any publicised prosecutions which occur relating to the policy) can reasonably be expected to act as a deterrent to designated HE providers not complying with their conditions of OfS funding, registration or Student Support Regulations, by making it less easy to hide or remove incriminating evidence from the authorities. This is an indirect benefit to the taxpayer, but also to students, who can be harmed directly or indirectly by provider fraud or mismanagement.
39. There is the potential that individuals working at providers who are implicated in the breaching of conditions of OfS funding, registration or Student Support Regulations or those who may be inclined to do so in the future, will alter their behaviour as a result of this policy and take steps to conceal evidence of non-compliance as they go along. For example, the proposed powers of the policy only extend to searching the commercial premises of the provider and not the private residence of a provider's management, where evidence could also be hidden if the manager was intent on doing so. Knowing this, an employee or manager involved in purposely breaching the provider's conditions could make a habit of storing important data and files at home. Behaviour changes like this could reduce the effectiveness of the policy.

### *Reduction of reputation risk for the HE sector*

40. As an indirect result of improving compliance levels and increasing the speed of resolving irregularities and fraud, the chosen option should reduce reputational risk to the HE sector as a whole.

## Costs

### *Inspection costs to the taxpayer*

41. Inspections under the chosen policy will involve small legal and enforcement costs, and small investigations costs (e.g. potentially imaging of IT equipment) to the taxpayer which current inspections based on provider consent do not have. A court order needs to be obtained which will represent a cost to the court system. DFE or the Office for Students will need to make a legally defensible case for entry; establishing this will require legal advice. Once a court order has been obtained, a police officer may be in attendance when the power of entry is exercised, in accordance with the court order.

42. These costs are not expected to be significant given that we expect use of these powers to be very limited. Based on projected growth in alternative providers as given in the separate Market Entry impact assessment, and on the proportion of cases in 2012 – 2015 where investigating officials believe entry powers may have aided their investigation, we would expect an average of three requests for court orders per year over the ten-year period 2017/18 to 2027/28.

#### *Costs to providers*

43. Inspection-related costs for alternative providers of the chosen policy are expected to be very limited, because very similar investigations, involving a mutually-agreed investigation visit, would have occurred in the do-nothing scenario (albeit more slowly) where DFE or the Office for Students has a reasonable suspicion that a serious breach of conditions has occurred. It is important to note that any costs incurred by providers who are ultimately found to be breaching conditions of OfS funding, registration or Student Support Regulations would not be considered as costs to business for the purposes of the impact assessment.

#### *Inspection numbers: alternative providers*

44. Providers have so far consented to inspection, but the process of agreeing and setting up the investigation visit involves a time lag (the typical delay period for alternative providers between 2012 and 2015 was two to four weeks). If an alternative provider did refuse entry, the authorities currently have the power to apply sanctions which can in theory induce them to cooperate, for example by removing the provider's designation status and halting future payments. Outright refusal of an alternative provider to allow an inspection even after sanctions are imposed would imply strongly that suspicions of a breach of conditions are correct, so it is reasonable to discount the provider costs of any inspections occurring under the proposed policy which would not have eventually occurred voluntarily in the do-nothing case (because the additional inspections are those most likely to relate to cases of breached conditions).

45. Thus, the introduction of powers to enter and inspect does not mean there will be additional inspections for alternative providers who are not breaching their conditions of OfS funding, registration or Student Support Regulations, but rather that inspections will occur sooner for those where reasonable suspicion of fraud or malpractice exists.

#### *Costs of accommodating inspections*

46. Inspections where the power of entry is exercised, like mutually-agreed investigation visits in the counterfactual, will occur at a reasonable hour. Costs to providers associated with accommodating an investigation visit (e.g. staff hours spent verifying

court orders, showing investigators where to find documents and data, standing by and observing while they collect evidence) are assumed to be very similar in the counterfactual and under the chosen policy option. Because inspectors under the chosen option will have powers to remove evidence from the premises of the provider, it is even possible that inspection time, and thus the staff costs of accommodating inspections, will be reduced (see next section for more on seizure of evidence).

### *Seizure of documents and evidence*

47. Under the chosen policy inspectors would have the power to seize documents, computers or other items found on the provider's premises during an inspection which it believes may be relevant to an investigation, a power that doesn't currently exist. Items seized will be retained only as long as required for the investigation, and would then be returned to the provider. It is likely that materials would only be removed if it is not possible to make copies to take away, and returned promptly wherever possible. Thus, there is a potential cost to business of the chosen policy option for those providers who are not breaching their funding and/or designation conditions, which temporarily lose access to documents or IT equipment needed for day-to-day operations while investigations are carried out. The length of time, the nature and the amount of materials taken away are likely to vary widely on a case-by-case basis (if materials are removed at all), so it is not possible to robustly monetise the potential cost to providers of seizure of evidence. To have established a sufficient case to legally enter a provider's premises with a court order implies investigators have a fairly clear understanding of the concern they have, and what sort of evidence they are looking for. Further, these measures would only be used in extremis.

### **Familiarisation costs**

48. Familiarisation costs of this measure are expected to be negligible for designated alternative providers, who are already aware from the updated guidance of 2015 that they are required to allow DFE immediate entry as a condition of being designated for funding purposes, if DFE has a reasonable suspicion of fraud or irregularity. Familiarisation costs for HEFCE-funded providers are likewise expected to be negligible, as providers are already subject to HEFCE financial monitoring and compliance arrangements. Familiarisation will form part of the wider familiarisation with the package of new measures in the HE Bill.

49. It is not expected that providers would need to train employees in relation to this measure, although we would expect providers to inform staff of the new policy, including that in the event of an investigation they would have to cooperate or face a criminal penalty. We could add that any official exercising the power would explain clearly to employees that they were required to cooperate, and the consequences of obstructing entry.

## Small and micro business assessment

50. This policy will affect all HE providers subject to conditions of OfS funding, registration or the Student Support Regulations. Providers currently in receipt of HEFCE funding are generally large. The alternative provider population is made up of smaller organisations, with research estimating around 75% of alternative providers to employ ten or fewer full-time equivalent staff<sup>160</sup>. It is not appropriate to make an exemption for small or micro providers.

## Business Impact Target

51. As discussed throughout the impact assessment, costs for providers of the proposed policy are expected to be negligible, and impacts cannot be reasonably monetised. Therefore, this policy change has a zero score for the purposes of the Business Impact Target.

## Implementation

52. These measures will be implemented from the date of creation of the proposed new regulator, the Office for Student

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<sup>160</sup> BIS (2016) 'Understanding the market of alternative providers of higher education and their students in 2014'

<b>Title:</b> Alternative student finance <b>IA No:</b> BIS003(F)-HE <b>RPC Reference No:</b> RPC-3334(1)-BIS <b>Lead department or agency:</b> Department for education <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>			
	<b>Date:</b> 11/12/17			
	<b>Stage:</b> Enactment			
	<b>Source of intervention:</b> Primary			
	<b>Type of measure:</b> Domestic			
<b>Summary:</b> Intervention and Options			<b>RPC Opinion:</b> GREEN	

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out	Business Impact Target Status

**What is the problem under consideration? Why is government intervention necessary?**  
Some prospective Muslim students could be deterred from entering higher education if they consider the interest payable on student loans is inconsistent with the principles of Islamic finance. Primary legislation currently gives the Secretary of State the power to offer loans and grants to support students in England, but the Secretary of State does not currently have the power to offer any alternative student finance products which might meet the needs of some prospective students (and commercial alternatives are not readily available). Government intervention is therefore required to change the primary legislation and enable the Secretary of State to offer alternative student finance products.

**What are the policy objectives and the intended effects?**  
The aim is to enable the Secretary of State to offer alternative student finance products which address the potential concerns of some prospective Muslim students about the student finance products currently available. The effects will depend on how the power in primary legislation is used (which will be set out in secondary legislation and supported by further impact assessments), but the intention is that more prospective students should feel able to access student finance and pursue higher education, and should feel more comfortable with the options available to them. Widening participation in higher education is a priority for this Government, and enabling alternative student finance products will help support this agenda.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**  
**Option 0 (do nothing):** The Government would continue to provide interest-bearing loans only, and no new student finance option would be made available. Doing nothing will mean positive real rates of interest could continue to deter some prospective Muslim students from accessing higher education.  
**Option 1 (preferred):** Introduce primary legislation to allow for alternative student finance to be offered alongside equivalent student loans. The option will be developed further and secondary legislation and further impact assessments will be required. Currently, the Takaful model (see paragraph 16) is the lead model. It is based on mutual lending where graduates' payments fund the studies of future students. It would be available to students of all faiths and none, with no financial advantage or disadvantage relative to equivalent student loan.

<b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> Two years after launch				
Does implementation go beyond minimum EU requirements?			N/A	
Are any of these organisations in scope?			<b>Micro</b> Yes	<b>Small</b> Yes
			<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b>	
			<b>Non-traded:</b>	

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister:



Date: 11/12/17

# Summary: Analysis & Evidence

# Policy Option 1

Description: Alternative Student Finance

## FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low				
High				
Best Estimate		0	0	0

### Description and scale of key monetised costs by 'main affected groups'

We do not believe there to be direct costs to businesses or individuals at the current stage of policy development. The alternative product is likely to be delivered on the basis of existing processes which individuals use to apply for student finance and which graduates and their employers use to make payments into the student finance system. We do not therefore anticipate additional cost to businesses who currently hire

### Other key non-monetised costs by 'main affected groups'

Delivery costs to government are unknown at this stage (though the intention is to maximise value for money and use existing systems where possible while ensuring consistency with Sharia principles). Costs to Government will include ongoing costs of subsidising the system, in addition to operating costs. These will be estimated for impact assessments to support secondary legislation, based on further engagement with key parties. There could be negligible additional costs to students who currently take out student loans from researching the options. There may be some additional costs to students who would previously not have accessed student funding, including when they access the finance and when they make their contributions as graduates (but these will be equivalent to those incurred by students accessing the equivalent student loan).

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low		0.0	43.9	363.3
High		0.0	73.1	605.5
Best Estimate		0.0	58.5	484.4

### Description and scale of key monetised benefits by 'main affected groups'

Evidence gathered so far shows demand for this product exists but further evidence is needed to estimate its scale among prospective students of all religions and none. This prevents us from monetising direct benefits at this stage. In analysis to support secondary legislation we will look to do more to estimate likely demand, for example using stakeholder engagement and surveys.

### Other key non-monetised benefits by 'main affected groups'

This policy will support additional participation among some prospective students whose religious beliefs may prevent them from taking out student loans and who are unable to access sufficient financial support from e.g. family. Additional participation will lead to direct benefits for these individuals in the form of a lifetime graduate net salary premium (approximately £168,000 for men and £252,000 for women), and to the exchequer (higher lifetime income and National Insurance payments). The product could also improve the experience and completion rates for some Muslim students who, evidence from key stakeholders suggests, currently experience stress over taking out a financial product which contradicts their beliefs. Wider indirect benefits are expected from increasing the supply of higher-skilled workers in the economy.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
We are unable at present to make robust estimates of demand levels for the proposed alternative product. It could be low (since many Muslim students currently access equivalent student loans), or high (if there is large-scale displacement from loans to the alternative, including students of all faiths and none). At this stage the costs to Government of establishing and operating the system are unknown. Further analysis will be needed to support the development of the system, including secondary legislation.		

## BUSINESS ASSESSMENT (Option 7)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m: 0
Costs: 0	Benefits: 0	Net: 0	



## Background

1. The Government understands there are concerns that the principles of Islamic finance might prevent some prospective Muslim students from taking out loans which have a positive real rate of interest, and therefore deter them from pursuing their education.
2. Responding to concerns, the coalition Government conducted a consultation “*Sharia-compliant student finance: Consultation on a Sharia-compliant alternative finance product*” in April 2014<sup>161</sup>. Views were sought on a particular product (the Takaful model, see paragraph 16) including its acceptability and likely demand. The consultation had almost 20,000 responses. The consultation was restricted to student finance in England (student finance is devolved to Scotland, Wales and Northern Ireland).
3. The present Government has sought to develop the model and explained that subject to Parliament it intends to introduce an alternative model of student financial support through new primary legislation. Primary legislation is necessary to give the Secretary of State the power to offer alternative student finance alongside loans and grants. This impact assessment covers the introduction in primary legislation of this power. Further detail will need to be set out in secondary legislation, and there will be further work to develop the model to full operation.
4. Further analysis will be needed to support this forthcoming work. During this analysis, we will seek to obtain and refine estimates of demand, and the potential for burdens on business and individuals. We will seek to do this, for example, by engaging with key stakeholders and using surveys. As we use analysis to support development of the product, minimising burdens on business will be a key aim.

## Problem under consideration

5. Interest is payable on student loans. Before 2012 interest rates on income contingent repayment (ICR) loans were based on whichever is the lower of the Retail Price Index (RPI) or the current bank rate plus 1%. In 2012 higher education funding was reformed, to ensure it remained sustainable and fair. Interest rates changed, such that students now incur interest rates of RPI + 3% whilst studying, followed by an interest rate of between RPI and RPI + 3%

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<sup>161</sup> BIS(2014) *Consultation on a Sharia Compliant Alternative Finance Product*  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/303423/bis-13-1311-consultation-on-a-sharia-compliant-alternative-finance-product.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/303423/bis-13-1311-consultation-on-a-sharia-compliant-alternative-finance-product.pdf)

BIS(2014) *Government Response to a Consultation on a Sharia Compliant Alternative Finance Product*  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/349899/bis-14-984-government-response-to-a-consultation-on-a-sharia-compliant-alternative-finance-product.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/349899/bis-14-984-government-response-to-a-consultation-on-a-sharia-compliant-alternative-finance-product.pdf)

dependent on income post study. Since some prospective Muslim students consider interest to be forbidden (haraam), they might be deterred from accessing student finance and therefore pursuing higher education.

6. A further change to student finance was made more recently - maintenance grants are being replaced by loans from academic year 2016/17. The impact of this change on equality was considered in accordance with the Public Sector Equality Duty. The analysis set out that “[Muslim students who did not access interest bearing loans] will no longer have access to funding for living costs as non-repayable finance is no longer available”<sup>162</sup>. These circumstances might make it harder for Muslim students to find the sums necessary from family or work to fully fund their education if they do not want to access interest bearing student loans.
7. If a number of talented people, particularly concentrated in a particular religious group, are not accessing higher education then this risks undermining the Government’s commitment to widening participation and improving social mobility and limits the benefits to individuals and society of higher education.

## Rationale for intervention

8. The Government recognises a demand (which it will seek to understand more fully and quantify in further policy development) for a non-interest-bearing alternative form of student finance which is in keeping with the Islamic principle of interest-bearing financial products being forbidden to its adherents. According to interest groups this demand has increased as a result of recent policy to ensure higher education funding is fair and sustainable. These include: i) real positive interest rates being applied to student loans as of 2012 (which may have made the prospect of a student loan less permissible under the principles of Islamic finance for some prospective students); ii) increases in the level of tuition fees; and iii) the conversion of grants to loans which could reduce the viability for students to rely solely on (extended) family for financial support as a substitute for a loan<sup>163</sup>.
9. As far as we know, there has been no alternative student finance solution consistent with the principles of Islamic finance launched in the market, despite the apparent demand. (There is also no provision of or direct competition with

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<sup>162</sup> BIS (2015) *Student Finance Equity Analysis – The Education (Student Support)(Amendment) Regulations 2015*

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/482110/bis-15-639-student-finance-equality-analysis.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/482110/bis-15-639-student-finance-equality-analysis.pdf)

<sup>163</sup> Anecdotal evidence suggests that family support or work are likely ways in which Muslim students have dealt with the lack of a non-interest-bearing financing solution historically, the other way being not going to university.

Government for equivalent student loans in the existing market for student finance products). It is possible that the stated government commitment to providing student finance consistent with the principles of Islamic finance might have prevented firms from creating products in this space in anticipation of a government product with which they would be unable to compete.

10. The unmet demand for student finance consistent with the principles of Islamic finance might mean that some would-be students may be prevented from participating in higher education on the basis of their religious beliefs. Others participate in spite of their preference for an alternative, and may experience emotional stress which negatively affects their experience of higher education, potentially resulting in non-completion of courses. Alternatively, they might restrict their choice of course or institution to reduce the amount they borrow, and therefore make choices which are not optimal for them and limit their potential.
11. Enabling additional participation in, and better experiences of, higher education will result in benefits for the affected individuals but also to the wider economy through positive spill overs of higher education. It will also improve equality of outcomes. Government intervention is required to enable the creation of an alternative student finance offering alongside equivalent student loans which will increase access to higher education in England.

## Description of options considered

12. There were effectively only two options under consideration (which were discussed with key stakeholders during formal consultation in 2014)<sup>164</sup>.

### Option 0: Do nothing

13. No new finance option would be made available. The status quo would persist, meaning that some would-be students may not participate in higher education because they cannot access the finance they need in a way which is acceptable to their religious beliefs. Other students may take out an equivalent loan to study even if doing so causes them emotional stress to do so, and / or limit their choices to reduce the amount of loan they use.

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<sup>164</sup> BIS(2014) *Consultation on a Sharia Compliant Alternative Finance Product*  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/303423/bis-13-1311-consultation-on-a-sharia-compliant-alternative-finance-product.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/303423/bis-13-1311-consultation-on-a-sharia-compliant-alternative-finance-product.pdf)

BIS(2014) *Government Response to a Consultation on a Sharia Compliant Alternative Finance Product*  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/349899/bis-14-984-government-response-to-a-consultation-on-a-sharia-compliant-alternative-finance-product.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/349899/bis-14-984-government-response-to-a-consultation-on-a-sharia-compliant-alternative-finance-product.pdf)

## **Option 1: Introduce primary legislation to allow for alternative student finance to be offered alongside financially equivalent student loans**

14. Primary legislation would give the Secretary of State the power to introduce an alternative student finance product alongside existing student loans. Details of the alternative student finance product would be set out in secondary legislation.

15. The key principles for an alternative student finance product were set out in the consultation exercise in 2014 and are:

- The product should be available to everyone, on the same eligibility basis as an equivalent student loan;
- Repayment levels and totals must be commensurate with those of an equivalent student loan, so no group is in a better or worse financial position than their peers;
- Making repayments should be as easy as for users of an equivalent student loan, therefore it should be possible for repayments to be made directly through the tax system;
- Applications should operate in the same way as for an equivalent student loan, so there is no excessive burden;
- The product should be transparent in its workings and easy for potential students to understand.

16. As further described in 2014, a Takaful model was developed specifically to support students seeking alternative student finance. It was widely supported and viewed as acceptable<sup>165</sup>. The model's underlying principle is one of communal interest and transparent sharing of benefit and obligation, with the contributions of graduates participating in the fund being used to provide finance to future students who elect to join the fund. The element of borrowing money and paying back with interest to a third party (which is not compliant with Islamic finance principles) would not exist.

17. Students obtaining finance from the fund would do so in the same way as those applying for the equivalent student loan. There would be a contractual agreement that the individual would later pay a Takaful contribution for the benefit of members of the fund. These contributions would be made once the individual was in employment and earning above the repayment threshold, which would be set at the same level as existing student loans.

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<sup>165</sup> The Takaful model is the preferred option accepted by 81% of respondents at consultation; only 2% of nearly 20,000 respondents thought it was unacceptable.

## Alternatives to regulation

### Providing additional information about student loans

18. As an alternative to regulation we have considered providing additional information on gov.uk highlighting the advantages of income contingent repayment student loans to prospective students who are reluctant to take them out. However, for individuals who are fundamentally opposed to the concept of interest (i.e. those most likely to not participate in higher education in the do-nothing scenario), this would be unlikely to address the issue.

### Incentivising private sector solutions

19. The Government has not particularly sought to encourage a private sector alternative student finance offer for one group of students, given the role of Government in providing student finance for all eligible students in England. A private sector product would not be able to offer the same favourable financing terms to prospective students as the Government, so the Government's aims of widening participation and promoting equal access to education would not be met.

## Description and scale of key monetised costs and benefits by main affected groups

### Option 0: Do nothing

20. A do nothing (or alternative to regulation) option would have essentially zero cost to business, since business would experience no changes and have no new role to play. The student loan repayment system, operated by businesses through PAYE for their graduate staff, would not be changed.
21. Advice and guidance would be widely available on gov.uk to all students, at negligible cost to Government. There may be a need to widen the accessibility of the additional information available on student finance to other channels other than Student Finance England website, which may result in some actual cost.
22. This option would, however, have limited benefit, since the limited additional information that could be provided to prospective students might not influence beliefs which have endured under the current student finance arrangements and associated communications.

## Option 1: chosen policy

### **Benefits**

#### *Direct benefits to individuals – increase in HE participation*

23. In consultation (2014) it was shown that some Muslim students in the current system would prefer to use alternative student finance but nevertheless do choose to take out equivalent loans to be able to study. It was also apparent that of those would-be students who will not (or strongly prefer not to) take out an interest-bearing loan, some receive financial help from extended family to go to university<sup>166</sup>, while others may choose not to go to university at all in the absence of alternative student financing.
24. Making an alternative student finance product available will remove a barrier to participation in higher education among prospective students who will not take out an interest-bearing student loan for religious reasons. The introduction of a positive real interest rate on equivalent student loans in 2012 may have reduced the number of Muslim students willing to take out an equivalent student loan on religious grounds (i.e. the previous loan without real interest may have been marginally acceptable within some students' religious beliefs but the introduction of positive real interest may have pushed the student loan outside of the margin of acceptability).
25. In particular, it will support additional participation in higher education among those students who will not obtain a loan for religious reasons and who do not have access to sufficient private financial support from family or friends to go to university. The 2012 tuition fee increase and recent replacement of grants with loans may have made it more difficult for some students to rely solely on financial assistance from family and friends.
26. The benefits to individuals of graduating from higher education are clear, including having a higher probability of being employed relative to someone without a higher education and experiencing a 'graduate premium' in lifetime earnings. For example, DFE research in 2011<sup>167</sup> showed having an undergraduate degree increased an individual's average employment likelihood

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<sup>166</sup> The Federation of Student Islamic Societies (FOSIS), and some other stakeholders in discussion, have suggested that Muslim students often use their extended families to raise money to fund higher education.

<sup>167</sup> BIS Research Paper No. 45 (June 2011): *The Returns to Higher Education Qualifications* [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/32419/11-973-returns-to-higher-education-qualifications.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/32419/11-973-returns-to-higher-education-qualifications.pdf)

by 2.6%, while research in 2013<sup>168</sup> found that the mean net graduate premium was approximately £168,000 for men and £252,000 for women in 2013 terms over the average graduate's lifetime (with substantial variation depending on the subject studied). The benefit an individual derives from higher education might be increased if the individual has chosen the right course and institution for them, rather than making choices to minimise borrowing costs.

27. Thus, there are likely to be large benefits for individuals who are enabled by this policy to participate in higher education who would not have done so otherwise. A basic model assuming an additional 0.1% of participation among Muslims at a typical age for higher education<sup>169</sup> suggests an additional 842 participants over the ten years following the policy's introduction, who would receive a total graduate premium benefit in those years of around £8.9m in net present value terms (see Table 61 below). For context, the 2011 census found that 24% of Muslims in the UK (approximately 435,000 people) had Level 4 and above (i.e. degree-level) qualifications, relative to 27.2% for the rest of the population<sup>170</sup>.
28. The model uses the estimated lifetime graduate net salary premium from research conducted for DFE in 2013<sup>171</sup>, applying a discount to reflect typical progression in earnings to estimate the hypothetical annual net benefit to the additional graduates in the early years following their graduation. The lifetime graduate premium estimates account for costs associated with studying (foregone earnings, tuition fees, interest repayments and so on), as well as taxes, so the benefits expressed are net of costs. We assume all courses are 3 years, so the hypothetical benefits accrue in seven of the ten-year period.

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<sup>168</sup> BIS Research Paper No. 112 (August 2013): *The Impact of University Degrees on the Lifecycle of Earnings: Some further analysis*  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/229498/bis-13-899-the-impact-of-university-degrees-on-the-lifecycle-of-earnings-further-analysis.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/229498/bis-13-899-the-impact-of-university-degrees-on-the-lifecycle-of-earnings-further-analysis.pdf)

<sup>169</sup> Assumed for simplicity to be 0.1% of 18-24 year-olds in the first year the product is introduced, and then 0.1% of 18 year-olds thereafter. Higher education and student finance are of course available outside these age ranges.

<sup>170</sup> Muslim Council of Britain (2015) *British Muslims in numbers: A demographic, socio-economic and health profile of Muslims in Britain drawing on the 2011 Census* [https://www.mcb.org.uk/wp-content/uploads/2015/02/MCBCensusReport\\_2015.pdf](https://www.mcb.org.uk/wp-content/uploads/2015/02/MCBCensusReport_2015.pdf)

<sup>171</sup> BIS research paper No. 112 (Walker and Zhu, August 2013): *The Impact of University Degrees on the Lifecycle of Earnings: Some further analysis*

**Table 1: Estimated graduate premium benefits to Muslim students who participate in higher education (undergraduate level) as a result of the policy (2017/18 – 2026/27)<sup>172</sup>**

	<b>Assumed level of additional participation among Muslims of typical age for HE entry</b>		
	<b>0.05%</b>	<b>0.1%</b>	<b>0.50%</b>
<b>Number of additional graduates expected</b>	421	842	4212
<b>Graduate premium benefits to individuals (2017 NPV)</b>	£ 4,542,472	£ 9,084,942	£ 45,424,713

29. However, as we do not currently have strong enough evidence to estimate the extent of the additional demand (i.e. we cannot justify any of the assumed levels of additional participation used for illustration in the table above), we have not included a monetised benefit in this impact assessment.

30. Results of the 2014 consultation, which received approximately 20,000 responses from individuals and organisations, suggested that demand exists in England for alternative student finance<sup>173</sup>, and that the proposed Takaful model would likely be acceptable to a significant proportion of individuals seeking such a solution to their student finance needs<sup>174</sup>.

31. Of the 1,095 responses by individuals in the consultation to the question “To what extent, if any, are you aware that students with religious objections to the charging of interest have been affected by the changes in tuition fees and student loans?”, 13% said they would not go to university as a direct result of both requiring an interest-bearing loan and increased tuition costs, as no other means of financial support was available to them. 12% of the group said they had not gone to university, attributing interest-bearing loans and no alternative financial means as a direct cause. Other attributes of the respondents are not known, making it difficult to draw robust inferences as to the size of the potential additional demand for higher education (for example, it is not clear how many of

<sup>172</sup> See Additional Evidence for a brief explanation of assumptions.

<sup>173</sup> 94% of consultation respondents answered “Yes” to the question: “Do you believe that there would be demand among students and potential students for an alternative finance product which was Sharia-compliant?”

<sup>174</sup> 81% of consultation respondents answered “Yes” to the question: “Do you believe that students and potential students whose faith has resulted in concerns about the interest rate on loans would find this alternative finance product acceptable?” Only 2% of respondents considered the Takaful model unacceptable.



the thousand respondents in question are Muslim or of a relevant age, let alone how reflective the sample is of prospective Muslim students generally).

32. The Student Income and Expenditure Survey collects data on religion from a representative sample of current students. The 2011/12 survey<sup>175</sup> contains information on loan take-up by Muslims and other religions. It shows that in practice many Muslim students took out Government student loans at the time when they did not carry a real positive interest rate. Take up was lower for Muslim students in 2011/12 relative to respondents stating “no religion,” but not the lowest among other stated religions.
33. There is a chance that the policy may increase participation among non-Muslim prospective students, of all religions and none, in parallel, but we do not have any evidence of demand in this group to assess this.
34. In future policy development, we would look to collect further evidence where possible to estimate the demand for the alternative financial option, with a focus on those (hard to reach) individuals who anticipate they would not partake in higher education without it.
35. Given the public sector equality duty, it is clear we have to consider introducing alternative student finance as a matter of principle, notwithstanding imperfect evidence about the exact level of demand.

#### *Direct benefits to the Exchequer - Higher income tax and National Insurance receipts*

36. Additional higher education graduates benefit the Exchequer because their higher lifetime earnings result in higher income tax and National Insurance payments than would have otherwise been made by those individuals. DFE research<sup>176</sup> in 2013 estimated that the net benefit to the Exchequer of a graduate was around £264,000 for men and £318,000 for women (in 2013 terms) over the graduate’s lifetime.
37. Using the same simple model as above, again with an arbitrary assumption of a 0.1% addition in HE participation among Muslims at an age typical for higher education would suggest a total benefit to the exchequer in the ten years following the policy’s introduction of around £12m in present value terms (see Table 2 below and Additional Evidence for more details). More evidence to estimate additional participation rates as a result of the policy would allow monetisation of this benefit in future analysis.

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<sup>175</sup> *Student income and Expenditure Survey 2011 to 2012*

<https://www.gov.uk/government/publications/student-income-and-expenditure-survey-2011-t0-2012>

<sup>176</sup> BIS Research Paper No. 45 (June 2011): *The Returns to Higher Education Qualifications*

**Table 2: Estimated net exchequer benefits resulting from policy-enabled increase in HE participation (UG level) (2017/18 – 2026/27)<sup>177</sup>**

	Assumed level of additional participation among Muslims of typical age for HE entry		
	0.05%	0.1%	0.50%
<b>Number of additional graduates expected</b>	421	842	4212
<b>Net benefit to exchequer – income tax and National Insurance (2017 NPV)</b>	£ 6,089,827	£ 12,179,653	£ 60,898,268

*Indirect benefits - Wider economic benefits*

38. It is widely acknowledged in the economic literature that skills are a driver of economic productivity and a critical element of other drivers of productivity, namely enterprise and innovation<sup>178</sup>. Skills also contribute to the development of a more efficient, effective and professionalised public service sector. The Government believes there are clear and recognised benefits to the economy from increasing the supply of workers with high level skills. These skills are needed to meet demand from employers and stimulate an innovation led economy, not least because changes in technology are increasing the demand for high skilled workers in the UK and internationally.

39. The UKCES Employer Skills Survey looks at skills shortages faced by employers both within their existing workforce and among potential recruits. It has shown that skills shortages are a growing challenge for firms looking to fill vacancies – there was a substantial increase in the number of reported skill-shortage vacancies in 2015 compared to 2013. The 2015 survey report found that a lack of skills for solving complex problems accounted for 39% of all skill-shortage vacancies.

40. The future demand for skills is expected to continue to focus on white collar, high skilled jobs. It is expected that the policy will deliver indirect benefits to employers facing skill shortages and to the wider economy in general as a result of increasing the supply of graduates. There is also likely to be a beneficial spillover

<sup>177</sup> See *Additional evidence for a brief explanation of assumptions*

<sup>178</sup> See OECD (2015) *Future of Productivity* for a review of the latest evidence on the drivers of productivity growth

<https://www.oecd.org/eco/growth/OECD-2015-The-future-of-productivity-book.pdf>

effect for businesses that employ these graduates; employers would benefit alongside individuals and the Exchequer as set out above, but the effect on employers is not quantified in the current context.

*Indirect benefits - Emotional benefits to students opting for alternative finance who would have taken a loan*

41. As previously mentioned, it is possible that the majority of demand for the product will come from individuals who would have otherwise taken out an equivalent student loan. Anecdotal evidence from the 2014 consultation suggested that for at least some Muslim students, the choice to take out an interest-bearing loan in the absence of an option consistent with their religious beliefs is a source of emotional stress which can persist throughout the individual's studies, even resulting in a choice to stop studying. This suggests that it is not appropriate to view the choice of students using the alternative finance product who would have otherwise taken out a loan as pure economic displacement, as their choice to use the new product may involve emotional or psychological benefits which improve their experience and outcomes in higher education (for example, increasing the likelihood of completing their course). These benefits are not possible to quantify given our current evidence base.

## **Costs**

42. The precise details of how the product will be delivered and administered have not been decided at this stage. However, given the policy objective that the proposed product should be as easy to access as a student loan, it is assumed that it would not create significant additional costs to individuals applying for student finance nor to businesses facilitating the repayment of student finance through the PAYE system. The expectation of low or negligible costs to each of these parties is explained in more detail below, including what further information we intend to collect in future policy development to test and monetise these assumptions.

*Direct costs to individuals – **expected to be negligible***

43. The changes required to accommodate the new financing option within the existing student finance architecture would not significantly alter the experience of students applying for equivalent loans, or those who would have applied for a loan if the alternative student finance option had not been available to them. As with equivalent loans, there will be no application fees or similar to apply for the proposed product. The student loan application form is expected to be updated with a tick-box option enabling the student finance applicant to select whether they wish to apply for an alternative option or the equivalent student loan.

44. The exact wording and explanations in student finance application guidance will need to be determined in further policy development to ensure the options' economic equivalence is clear (i.e. so students can understand easily from the application form that there are no financial or convenience benefits of choosing one option over the other). If this information is clear, some prospective students might not spend any additional time on their applications. It is possible, however, that some students would consider the two options more carefully, including those students who would have accessed student finance in the counterfactual scenario anyway. Students interested in the alternative student finance product would either tick that box and continue, or otherwise may spend some time assessing the proposed new product further to determine whether it is compliant with their religious principles<sup>179</sup>.
45. For those prospective students who would not take out student finance under any circumstances, there may be a modest time-cost to assessing the new financing option if they ultimately decide that it does not adequately meet their interpretation of Sharia-compliance (because they would not have spent the time researching the option in the counterfactual where the option did not exist). From our consultation and policy development to date, evidence suggests that the proposed product would be an acceptable solution to a majority of Muslims demanding non-interest-bearing student finance. We therefore expect the number of individuals in this scenario and the associated time cost to be small. Moreover, the time spent assessing the options by a young, unskilled and likely unemployed individual has a relatively low opportunity cost.
46. For students who would prefer an alternative financial solution but would ultimately be willing to take out an equivalent student loan in the counterfactual, any extra time spent researching the alternative option (to determine their views on it rather than the economic/financial equivalence which will be made very clear) would not be considered as an additional cost. This is because these students would be expected to sign up for student finance regardless (and choosing an equivalent loan after researching the new product would violate their stated preference for a non-interest bearing solution).

*Direct costs to businesses – expected to be low*

47. As of September 2016, HMRC will be collecting repayments of two “plans” of loans – Plan 1 (pre-2012 student loans) and Plan 2 (post-2012 student loans). From the academic year 2017/18 onwards, they will also be collecting

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<sup>179</sup> The consultation demonstrated (corroborating other reports) that Islamic finance and Sharia principles are open to interpretation and it is common for there to be different views and schools of thought. As a result, some individuals may not agree that the proposed Takaful model is Sharia-compliant; even if the majority of respondents to the consultation suggested that it would be acceptable to a large number of Muslims seeking a Sharia-compliant student finance solution.

repayments on postgraduate loans (Plan 3). The alternative finance product is currently proposed to operate as an additional type of repayment running alongside a plan, rather than a fourth plan type (though as mentioned policy and operational development is ongoing and will be subject to further analysis where necessary).

48. The changes required to accommodate the new financing option within the existing student finance repayment architecture would not currently be expected to impose additional costs on businesses hiring graduates. In keeping with the policy aim to make the proposed alternative student finance product as straightforward for students to access and repay as the equivalent student loan, it is intended that the contractual payments or contributions by the student, once employed, will be collected via the PAYE system in the same way that student loan interest and principal repayments are collected. Self-assessment or direct payments would be available for those outside PAYE, as they are for those repaying an equivalent student loan.
49. At present, HMRC determines whether an employed individual has a student loan (or student loans), what type of loan it is, and when the individual should be paying it back through the PAYE system. After determining an employed individual's repayment status, HMRC sends a start notice to the individual's employer to notify them to start collecting student loan payments from the individual's pay. The employer is not responsible for identifying the student loan status of their employees, nor what type of loan an employee may have. HMRC informs the employer what needs to be taken, from whom, and when.
50. Thus, from the perspective of the employer hiring a graduate under the proposed policy, nothing will change - HMRC will determine a new employee's student finance repayment 'type' and will inform the employer what needs to be taken and when. It is not the intention that the employer becomes responsible for determining whether an employee's student finance repayments are based on the new alternative student finance model or the equivalent student loan. It is, however, possible that the employer might want to understand more about the system and so read any updated guidance, and that they might have questions to answer from their employees or questions they need to ask of HMRC or the SLC. We would expect any such costs to be negligible, though will investigate further including through discussion with employers.
51. It is also not the intention that higher education institutions should be required to change their functions when they receive funding for tuition through the student finance system in relation to individuals accessing the alternative student finance product.

### *Implementation and delivery costs to HM Government and the Student Loans Company (SLC)*

52. The precise set-up, management and governance of the proposed new finance facility have not yet been determined. We will seek to use an architecture which represents value for money, which might include using existing processes and systems at certain points while ensuring the appropriate separation of the current and new systems for Sharia compliance. The costs to Government will include ongoing subsidy of the system (as Government also subsidises equivalent student loans). We do not currently have any reason to think the underlying profile and risks of this population will be different from the population using equivalent student loans.
53. DFE, the SLC and HMRC will work together to assess, as we develop this policy, how the new facility will work in practical terms. We thus expect to be able to monetise the cost to government and SLC in future analysis, including those supporting secondary legislation in due course.

### *Opportunity cost to exchequer of ring-fenced student finance repayments*

54. The structure of the proposed alternative student finance product could require that graduate contributions are made into the designated fund, with the funds therein earmarked exclusively for future participants in the alternative student finance scheme. Student finance displaced from equivalent student loans into the new product could thus be an opportunity cost to the exchequer (because previously, their graduate repayments could have been used for any government spending, but now may only be used to finance new and existing students participating in the alternative student finance scheme).
55. However, we anticipate that, if this is the case, the scheme could be managed in such a way that the ring-fencing required to achieve Sharia compliance will have a minimal impact on the government's spending flexibility.

## **Rationale and evidence that justify the level of analysis used in the IA (proportionality approach)**

56. Based on evidence from our consultation we are confident that demand for the proposed alternative student finance product exists among prospective students in the Muslim population in England. As described throughout the impact assessment, we are not currently in a position to robustly estimate the size of this demand, or any potential for extra demand from non-Muslims.
57. In the absence of evidence allowing us to estimate how many people would take out the product, we have qualitatively discussed the likely impacts on different

parties. We believe that the approach taken in this impact assessment to be proportional for the following reasons:

- a) Costs to individuals and businesses are expected to be low (with justification);
- b) There is potential for large-scale benefits if additional higher education participation is realised (also justified);
- c) Details of how Government can best deliver the product in a way which represents value for money is under discussion with relevant parties;
- d) Secondary legislation (including more detailed analysis) is required for the product to be introduced, and we have outlined areas in which we would seek more evidence in the meantime;

Even if no additional participation is realised (i.e. there is only displacement), the policy would still be achieving equality and widening access aims by increasing choice and satisfaction for students, and will help this Government achieve the Prime Minister's ambition to increase the number of black and minority ethnic group students going to university by 2020<sup>180</sup>.

## Risks and assumptions

58. Due to the lack of available evidence it is difficult to fully assess the risks associated with the implementation of this proposed policy change at this stage. We are basing our assumptions largely on data from the Government's 2014 consultation, as prior to this there was no firm evidence to inform policy.
59. We are seeking primary legislation to give the Secretary of State the power to offer alternative student finance. The intent is to assess the risks to government and the Student Loans Company in further analysis, including those to support secondary legislation.

## Additional Evidence: Model of potential benefits to individuals and the exchequer of additional HE participation among young Muslims as a result of the policy

We constructed a basic model to estimate the potential scale of direct benefits to individuals and the exchequer at different levels of additional HE participation. The main assumptions of the model are:

- The annual graduate premium and net exchequer benefits are based on findings in the 2013 DFE research paper No. 112 (Walker and Zhu, August 2013): *The Impact of University Degrees on the Lifecycle of Earnings: Some further analysis*

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<sup>180</sup> <https://www.gov.uk/government/speeches/higher-education-fulfilling-our-potential>

- Benefits to both the individual and Exchequer are modelled to vary over the lifecycle.
- All undergraduate courses are assumed to last 3 years, and there is 100% completion by additional HE participants.
- The model covers a 10-year period which, because courses are assumed to last 3 years, means that benefits accrue over 7 years.
- The estimated number of Muslims in different age brackets is based on 2011 census figures. We assume that the break-down of ages within different age group in the census is constant (i.e. there is an equal number of 18, 19, 20 year-olds etc. in the 18-24 group)
- We have assumed no migration.
- We assume that the 'additional' proportion of young Muslims deciding to enter HE as a result of the policy will apply to 18-24 year-olds in the first year the policy is introduced, and then to 18 year olds only in subsequent years.
- As per the main text on direct benefits, we illustrated the model's results with assumed increases in participation of 0.05%, 0.1% and 0.5% of the Muslim population of the typical age for HE entry. As discussed previously, we do not have evidence on the likely behavioural response to the introduction of these new finance products so the model's results are intended to be illustrative pending future evidence-gathering and analysis. For context, the 2011 census found that 24% of Muslims (approximately 435,000 people) had Level 4 and above (i.e. degree-level) qualifications, relative to 27.2% of the rest of the population<sup>181</sup>.

Benefits that spill over to the employer are not included in this analysis, only benefits to the individual and the Exchequer, so total benefits could possibly be higher.

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<sup>181</sup> Muslim Council of Britain (2015) *British Muslims in numbers: A demographic, socio-economic and health profile of Muslims in Britain drawing on the 2011 Census*



<b>Title:</b> Freedom of speech duty  <b>IA No:</b> DFE100  <b>RPC Reference No:</b> RPC-4174(1)-DFE  <b>Lead department or agency:</b> Department for education  <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>			
	<b>Date:</b> 11/12/17			
	<b>Stage:</b> Enactment stage			
	<b>Source of intervention:</b> Domestic			
	<b>Type of measure:</b> Primary Legislation			
<b>Summary:</b> Intervention and Options				<b>RPC Opinion:</b> Green

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out	Business Impact Target Status
£-9.3	£-9.3	£1.0		

**What is the problem under consideration? Why is government intervention necessary?**

The freedom of speech duty ('the Duty') ensures Higher Education (HE) providers have a legal responsibility to ensure that freedom of speech within the law is secured for their staff, students and visiting speakers. The Government attaches great importance to the Duty because freedom of speech promotes a culture where students learn the skills of critical thinking, challenge and debate. The Duty effectively replicates for the new HE regulatory system the practice that currently operates for HE providers eligible for Higher Education Funding Council for England (HEFCE) funding, and extends it to all providers registered with the Office for Students (OfS).

**What are the policy objectives and the intended effects?**

The Duty will require those responsible for the governance of the HE providers it covers to produce and keep up to date a code of practice and to take reasonably practicable steps to ensure compliance. The aim is to ensure that freedom of speech is protected in the HE sector. It has low compliance burdens for providers with greater but unquantified benefits to students and society from the protection of a fundamental freedom and an environment in which it is safe to debate new ideas and challenge current conventional wisdom, so as to support a diverse culture and the development of new ideas and solutions to problems facing society.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

The two main options (others discussed in the 'Description of options considered' section) are; · Option 0 – Do Nothing. A situation where there is no Higher Education and Research Act. Only those institutions currently under the scope of section 43 of the Education (No. 2) Act 1986, are subject to the Duty. In HE, this is broadly those who are eligible to receive HEFCE funding. · Option 1 (preferred) – Extending the scope of the Duty to all HE providers registered with the Office for Students (OfS) by amending section 43 of the 1986 Act. It would apply to all categories of registration suggested in the white paper. This is preferred because it will create a consistent approach across all registered providers and help ensure that freedom of speech is protected more widely across the sector than under option 0.

<b>Will the policy be reviewed?</b> It will not be reviewed. <b>If applicable, set review date:</b>				
Does implementation go beyond minimum EU requirements?			N/A	
Are any of these organisations in scope?		<b>Micro</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)		<b>Traded:</b>		<b>Non-traded:</b>

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible minister:



Date: 11/12/17

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Entry into the higher education sector and single entry gateway

## FULL ECONOMIC ASSESSMENT

Price Base Year 2017	PV Base Year 2018	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -10.3	High: -8.2	Best Estimate: -9.2

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	1.6	0.8	8.2
High	3.0	0.9	10.3
Best Estimate	2.3	0.9	9.2

### Description and scale of key monetised costs by 'main affected groups'

We assume that providers currently subject to the Duty under the Education (No.2) Act 1986 will incur no additional cost. An estimated 272 additional HE providers, which are currently outside of the regulated HE sector, will become subject to the Duty in year 1 (2018/19), by registering with the OfS. We estimate an average cost of £4,714 per HE provider in year 1, and £2,151 in each subsequent year. New providers will enter the sector each year, facing first year costs. Over ten years the total cost to the sector will be £9.18m.

### Other key non-monetised costs by 'main affected groups'

No non-monetised costs are identified.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0.0	0.0	0.0
High	0.0	0.0	0.0
Best Estimate	0.0	0.0	0.0

### Description and scale of key monetised benefits by 'main affected groups'

It is not possible to monetise the benefits due to a lack of evidence enabling us to quantify the impact of the legislation. However, the potential benefits are believed to be substantial, as illustrated below.

### Other key non-monetised benefits by 'main affected groups'

Freedom of speech plays a critical role for students in HE and supports a wider public interest. It is a key part of the student experience as it allows individuals to be exposed to a wide range of ideas and opinions and develops their skills to challenge views and ideas effectively. The Duty encourages institutions to think about what they actively do to ensure freedom of speech and enables staff, students and visiting speakers to compel institutions to act in accordance with their code of practice.

### Key assumptions/sensitivities/risks

Discount rate (%)

3.5

All HE providers newly covered by the Duty are assumed to face similar costs. The cost of updating and enforcing a code of practice for these providers is estimated using survey evidence from institutions who are already subject to the Duty and those expected to become subject to it under option 1. Those already under the scope tend to be larger HE providers. We anticipate that new providers coming under the scope of the Duty for the first time will tend to be smaller institutions.

## BUSINESS ASSESSMENT (Option 8)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: 1.0	Benefits: 0.0	Net: -1.0	

## Problem Under Consideration

1. The freedom of speech duty ('the Duty') is a statutory duty, under section 43 of the Education (No.2) Act 1986 that applies to certain Higher Education ('HE') providers. It requires those responsible for the governance of HE providers to which the Duty applies to take reasonably practicable steps to ensure that freedom of speech is secured for members, students and employees of the establishment, and visiting speakers.
2. Section 43 of the Education (No.2) Act 1986 also explains, among other things, that certain HE institutions/providers must:
  - a. not deny the use of their premises to any individual or body of persons based on;
    - i. Their beliefs or views
    - ii. The policy objectives of that body
  - b. issue and keep up to date a code of practice setting out;
    - i. Procedures to be followed by staff, students and members of the establishment at meetings/activities held on the premises of the institution
  - c. take such steps as are reasonably practical to ensure that the code of practice is complied with.
3. At present, the Duty applies to all universities (as well as university colleges and any college in a university), and to all other institutions within the "*higher education sector*" as defined by section 91(5) of the Further and Higher Education Act 1992. This typically includes higher education corporations and other institutions designated for funding from the Higher Education Funding Council for England (HEFCE).
4. The Higher Education and Research Act abolishes HEFCE, which would cause some providers that were originally subject to the Duty to fall out of its scope. This would mean fewer HE providers would be subject to the freedom of speech duty than before. Therefore, an amendment is required to ensure that all providers in the registered HE sector have the same commitments to upholding freedom of speech.

## Rational for intervention

5. Freedom of speech, within reasonable bounds, is a fundamental principle in HE and promotes a culture where students learn the skills of critical thinking, challenge and debate. Academic, political and wider civic debate also has an important role to play in improving outcomes for the economy and society. It provides a crucial forum for constructive challenge of conventional wisdom and debate of new ideas, which

enables citizens, communities and government to make better decisions about the key issues they face.

6. For this to be possible, participants in such debates must have confidence they have a safe environment in which they can bring forward their own ideas and criticise those of others without fear or risk of censorship, rebuke or reprisal<sup>182</sup>. This is particularly important if participants are presenting ideas and arguments that are unpopular or challenge conventional thinking. In the absence of such reassurances, the exchange and dissemination of new ideas and knowledge may be greatly stifled, hampering the development and implementation of new, more effective solutions which address the current challenges facing society.
7. In this way, freedom of speech, within reasonable bounds, plays a vital role for students in HE and supports a wider public interest. It is for these reasons that the Government attaches importance to the Duty which will ensure HE providers continue to support free speech, open debate and protect the rights of individuals to be able to think and express themselves freely.
8. Although there is no evidence to confirm whether Freedom of Speech is being limited in these institutions, the government wishes to take steps to ensure that this important right is protected in Higher Education for all members, staff, students and visiting speakers.

## Scope of duty

9. When the Office for Students (OfS) is set up it will register HE providers, some of whom will not otherwise be subject to the Duty.
10. Table 1 below shows the numbers of HE providers that will be subject to the Duty in the 'do nothing' option, a situation where there is no Higher Education and Research Act, and the 'preferred option', where the Duty is extended to all HE providers registered with the OfS.
11. At present, the Duty applies broadly to all higher education corporations and other institutions eligible for funding from the Higher Education Funding Council for England (HEFCE).
12. Table 1 below shows the estimated numbers of HE providers that would fall inside and outside the scope of the Duty under the options 0 and 1 in the academic year 2018/19, by type of provider and category of provider in the new regulatory system.

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<sup>182</sup> See Universities UK (2011) *Freedom of speech on campus: rights and responsibilities in UK Universities* <http://www.universitiesuk.ac.uk/policy-and-analysis/reports/Documents/2011/freedom-of-speech-on-campus.pdf> for more detail on the importance of freedom of speech in the HE sector.

Currently, all HE providers that are eligible for HEFCE funding are covered by the Duty. For 2018/19, these together are forecast to total 338 in number representing 55% of the forecast 611 HE providers within the regulated HE sector.

13. Based on our provider estimates, around 273 providers (comprising alternative providers and FECs) currently lie outside the scope of the Duty, representing around 45% of total providers in the regulated sector. It is therefore possible that some, but not necessarily all these institutions, there is a risk that insufficient or appropriate safeguards are in place to ensure freedom of speech.

14. **Table 1: Numbers of HE providers under the scope of the Duty in the two options (based on 2019/20 Estimates<sup>183</sup>)**

		In scope of the Duty	
	2019/20 estimates	Option 0: “Do Nothing”	Option 1: “Preferred”
<b>Registered Basic</b>	<b>103</b>		
Alternative Providers (APs)	68	X	✓
Further Education Colleges (FECs)	35	X	✓
Higher Education Institutions (HEIs)	0	X	✓
<b>Approved</b>	<b>129</b>		
APs	129	X	✓
FECs	0	X	✓
HEIs	0	X	✓
<b>Approved (fee cap)</b>	<b>379</b>		
APs	41	X	✓
FECs	206	✓	✓
HEIs	132	✓	✓
<b>Total</b>	<b>611</b>	<b>338</b>	<b>611</b>

## Description of options considered (including status-quo)

15. Table 1 above shows the numbers of HE providers that will be subject to the Duty in the ‘do nothing’ option, a situation where there is no Higher Education and Research Act, and the ‘preferred option’, where the Duty is extended to all HE providers registered with the OfS.

<sup>183</sup> Further details of the HE provider estimate modelling is provided in a technical note. This has been supplied separately as it underpins all of the HE provider estimates in the HERA (Higher Education and Research Act) enactment Impact Assessments.

## **Option 0 (do nothing)**

16. This sets out the baseline scenario under the assumption of the absence of the Higher Education and Research Act only those institutions under the scope of section 43 of the Education (No. 2) Act 1986 are required to take steps to protect freedom of speech. This is broadly those who are currently eligible to receive HEFCE funding, of which we forecast there would otherwise be around 338 in 2018/19.

## **Option 1 (preferred)**

17. The Higher Education and Research Act is used to amend section 43 of the 1986 Act to extend the scope of the Duty to all HE providers registered with the OfS. It would apply to all categories of registration.
18. It will require all registered providers to issue and keep up to date a code of practice setting out procedures to be followed in relation to all types of meetings or activities that are specified in the code and take place on their premises. The providers will need to take steps to ensure these procedures are complied with to ensure that freedom of speech is protected. It is intended that all registered providers subject to the Duty will provide students with consistent and comparable assurances about freedom of speech through their code of practice.
19. Option 1 is preferred as it will ensure that freedom of speech is protected in the sector as far as is practical and that all relevant providers give serious consideration to its importance. This will create a level playing field for all registered providers of HE, ensuring that the legal duty around freedom of speech applies more widely and consistently across the sector.
20. Another sub-option (option 2) was considered, which was to amend the current definition of HE provider that are subject to the Duty. At present, providers are defined as subject to the Duty if they are eligible for grant funding provided by the regulatory body, the Higher Education and Funding Council in England (HEFCE). Since HEFCE is abolished under the Act, an amendment is needed to redefine the scope of HE providers that are subject to the Duty, otherwise providers who are compliant due to their eligibility to receive HEFCE funding would fall out of scope. Those HE providers that are subject to the Duty as they fall under the definition of a 'University' or 'University college' would remain in scope of the freedom of speech duty.
21. Option 2 would have created no additional cost to HE providers, as all those who would be subject to the Duty in option 2 were already subject to the Duty under Section 43 of the Education (No. 2) Act 1986. This is because this option brings

back into scope those who would have no longer been subject to the Duty due to the abolition of HEFCE.

22. Option 2 was discounted as it would simply mean a return to the status quo, i.e. bring back into the scope of the Duty those providers which are already subject to it. It would not have the desired effect of the preferred policy option which is to extend the scope of the Duty to include all registered providers in the HE sector.

## **Analysis of options considered (including status-quo)**

### **Policy Option 0 (status-quo)**

23. In the do nothing scenario only those HE providers which are currently eligible for HEFCE funding would still be subject to the Duty. This would mean a total of 338 English HE providers remaining in scope:

- 206 Further Education Colleges (FECs) – These providers are in scope as they are FECs that are providers of Higher Education and in receipt of HEFCE funding.
- 132 Higher Education Institutions (HEIs) – These providers are in scope as they are included under the definition of “universities (as well as university colleges and any college in a university)”

#### *Costs*

24. There would be no additional costs associated with HE providers who already fall within the scope of the Duty and are compliant with its provisions.
25. HE providers currently outside the scope of the Duty who choose to take unilateral action to promote and protect freedom of speech at their institution would be expected to incur some costs. These costs would be voluntary and depend on the scale and scope of the measures that the provider puts in place.

#### *Benefits*

26. There would be no additional benefits associated with HE providers who already fall within the scope of the Duty and are complying with its provisions.
27. There will be additional benefits stemming from those HE providers currently outside the scope of the Duty who choose voluntarily to put in place their own plans to promote and protect freedom of speech at their institution. The size of these benefits, which cannot be monetised, will depend on the scale and scope of the measures which the provider puts in place.



## Policy Option 1 (Preferred Option)

28. Under the preferred option, whereby the amendment to the Higher Education and Research Act is enacted, all providers registered with the OfS would be subject to the Duty. This would mean that in total around 611 registered HE providers would fall within the Duty's scope, of which 273 would be additional (comprised of 238 Alternative Providers and 35 FECs).
29. All such providers would be required to comply with the provisions set out in section 43 of the Education (No. 2) Act 1986. Sub-sections (3) and (4) of the Duty require HE providers to produce a code of practice in relation to the Duty and to take reasonably practicable steps to ensure that the code of practice is adhered to. A code of practice would be a document, typically around six pages long, setting out the procedures to be followed by staff, students and members of the establishment at meetings/activities held on the premises of a Higher Education provider.

### *Building the evidence base on the cost of complying with the Duty: a survey approach*

30. There is a lack of available data on the potential costs of complying with the Duty. To address this evidence gap a short survey was carried out to collect information on actual and expected compliance costs from two distinct groups of HE providers:
- Higher Education Institutions, already subject to the Duty under section 43 of the Education (No. 2) Act 1986; and
  - Alternative Providers (APs) who are currently not subject to the Duty, but will likely come under its scope as a result of the Bill Amendment.
31. From the pool of HE providers not already subject to the freedom of speech duty, we randomly selected from APs subject to the Prevent duty. These providers were selected because we believed that they could use costs estimates in relation to relevant parts of the Prevent duty, which are likely to be similar in scale, as a point of reference to estimate the costs of being subject to the freedom of speech duty. The Prevent duty imposes requirements of a similar scale to the freedom of speech duty, such as mitigating risks around external speakers and events on campus<sup>184</sup>.
32. The survey used is set out in Annex A at the end of this impact assessment. The questions focused on the actual and estimated costs to providers of familiarising themselves with the Duty; drafting, issuing and updating the required code of practice; and then enforcing it.
33. Alternative Providers currently not subject to the Duty were not asked about their expectation of any costs related to enforcement or the updating of a code of

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<sup>184</sup> To comply with the Prevent duty HE providers must, among other things, have systems in place for assessing and mitigating risks around external speakers and events on campus, while maintaining the existing duty to promote freedom of speech.

practice because we did not believe they would be able to provide reasonable estimates on these activities. This is because they would not yet know what enforcement of a code of practice would entail or how often the document would need updating as they have had no experience with this specific policy.

34. A total of 30 HE providers were contacted and we received responses from six, two of whom were already subject to the Duty and four of whom were not, representing a 20 per cent response rate. The majority of these respondents were Alternative Providers, a group which make up the majority of the providers which will be newly subject to the Duty. Four of the six providers already voluntarily produce a code of practice, meaning they can give accurate cost estimates for producing, updating and enforcing a code of practice.
35. Two of the four providers that were not, at the time of the survey, in the scope of the Duty already produced a code of practice, meaning that 50% of HE providers outside of scope already complied to the Duty voluntarily. As there were only four responses from HE providers not in the scope of the Duty, we cannot be sure that this figure would be representative of the sector as a whole. Therefore, we have not accounted for the fact that some providers already comply with the Duty, and so their initial costs would be lower, in our cost calculations. We therefore assume that our cost estimates are likely to be an upper bound and the additional costs to many HE providers will be lower.

#### *Total compliance costs<sup>185</sup>*

36. Table 2 below sets out our estimates, based on the survey responses we received, of total compliance costs for providers newly coming under the scope of the Duty, and broken down by type of cost.
  - Familiarisation of what the Duty requires of their institution, writing a code of practice, signing off and issuing the document and enforcing the code of practice are all the tasks that a HE provider would have to undertake to fulfil the requirements of the Duty in year one. Familiarisation costs capture the costs, among other things, of any staff training that a provider decides to conduct for their staff regarding the Duty.
  - Updating a code of practice, signing off and issuing the document and enforcing their code of practice are all tasks that a HE provider would have to undertake to fulfil the requirements of the Duty in each subsequent year. Monitoring costs are captured in the costs of enforcing their code of practice. Costs of re-training staff regarding the Duty are captured in the updating costs provided by the HE providers.

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<sup>185</sup> All costs are provided in 2017 prices in nominal terms.

37. HE providers are not required to report on their compliance with the Duty. Any decision to do so by a HE provider is voluntary and so the cost of any reporting is not measured in this IA.
38. Based on survey responses, we estimate the total cost of complying with the Duty (including familiarisation costs and issuing a code of practice) in the first year to be around £4,714 per provider<sup>186</sup>.
39. In subsequent years, we estimate the total cost of complying with the Duty (including updating and enforcing the code of practice) to be around £2,151 per provider based on survey responses<sup>187</sup>.

**Table 2: Cost to business in the first and subsequent years of the Duty<sup>188</sup>.**

	<b>Initial costs (Year 1)</b>	<b>Ongoing costs (Year 2 onwards)</b>
Familiarisation with Duty	£1,618	
Writing code of practice	£1,211	
Sign-off code of practice	£171	
Issue code of practice	£692	
Updating code of practice		£218
Sign off updated code of practice		£85
Issue updated code of practice		£825
Enforcing code of practice	£1,022	£1,022
<b>Total Compliance Costs</b>	<b>£4,714</b>	<b>£2,151</b>

40. Half of the Alternative Providers that we surveyed indicated that they were already committed to protecting freedom of speech within their institution, and voluntarily produced a code relating to freedom of speech that was very similar in form to a

<sup>186</sup> First year costs are calculated by summing the best estimate cost to providers of familiarisation (£1,618), writing (£1,211) signing off (£171) and issuing (£692) a code of practice and enforcing the code of practice (£825): £1,618+£1,211+£171+£692+£825=£4,714

<sup>187</sup> Subsequent year costs are calculated by summing the best estimate cost to providers of updating (£218), signing off (£85) and issuing a code of practice (£825) and enforcing the code of practice (£1,022): £218+£85+£825+£1,022=£2,151

<sup>188</sup> More details to how these costs are calculated are provided below.

code of practice. Therefore, some HE providers that will come in scope of the freedom of speech duty will not face some of the additional costs laid out above as they already voluntarily comply.

41. First year transition costs for these institutions are expected to be minimal as they already have a written and published code of practice. The costs associated with development and enforcement of the code in subsequent years, including any updates and enforcement will still apply to these institutions. As some HE providers are voluntarily complying with the requirements of the freedom of speech duty, we can assume that the total additional costs to new institutions set out in this analysis is likely to be an over estimate.
42. In the following sections, we provide more detail on how the respective cost components – familiarisation, writing, signing off, issuing, updating and enforcing code of practice – have been calculated based on survey responses and the extent to which these estimates can vary based on different cost information and assumptions.

#### *Breaking down total compliance costs into its respective components*<sup>189</sup>

43. In the following analysis, we present for each type of cost, a range of estimates. The high estimates are based on the cost information provided by survey respondents. Low estimates are based on Annual Salaries and Hourly Earnings (ASHE)<sup>190</sup><sup>191</sup> data published by the Office for National Statistics to model salaries, but still using information on total staff time provided by survey respondents. All hourly, daily and yearly earnings are uplifted by 19.8%<sup>192</sup> to incorporate non-wage costs, these calculations give us our low estimates.

#### *Cost of familiarisation with the Duty*

44. Table 3 shows that survey respondents estimated they would spend in total an average of 28 hours familiarising themselves with the Duty and understanding what

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<sup>189</sup> All costs are provided in 2017 prices in nominal terms.

<sup>190</sup> Occupation (2digit SOC) – ASHE: table 2 (2016)

(<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/occupation2digitsocashetable2>)

<sup>191</sup> All ASHE data is updated to 2017 prices using OBR RPIX estimates for Jan-Mar quarter – published in March 2017.

<sup>192</sup>A 19.8% uplift has been applied to the wage rate figures to include non-wage costs. Eurostat defines wage and salary costs as direct remunerations, bonuses, and allowances paid by an employer in cash or in kind to an employee in return for work done, payments to employees saving schemes, payments for days not worked and remunerations in kind such as food, drink, fuel, company cars, etc. Non-wage costs are defined as the employers' social contributions plus employment taxes regarded as labour costs less subsidies intended to refund part or all of the employer's cost of direct remuneration. Using Eurostat data, non-wage costs as a percentage of wage costs were approximately 19.8% at the time of writing. The underlying data can be found at <http://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>

it meant for their particular institutions with the bulk of the task done by a senior manager.

**Table 3: Distribution of survey responses on the number of hours needed for a HE provider to familiarise themselves with what the Duty requires of their institution.**

	Low	Median	High	Mean
Familiarisation (No. hours)	4	13	64	28

45. Based on survey responses, on average, HE providers expected that familiarisation would cost their institution £2,312<sup>193</sup>. We take this as our high estimate. Using ASHE data the hourly rate of a senior manager is estimated as £33.41<sup>194</sup>, which indicates an average cost of familiarisation of £924<sup>195</sup>. We take this as our low estimate.

46. Accordingly, we take as our best estimate the mid-point<sup>196</sup> between these two values which is £1,618. This is the value which we have used in our impact assessment calculations (see Table 4 below).

**Table 4: High/Best/Low estimates of the cost of familiarisation**

	Low estimate	Best estimate <sup>197</sup>	High estimate
Cost of familiarisation	£924	£1,618	£2,312

*Cost of writing a code of practice*

<sup>193</sup> An average of each providers estimate of the cost to their institution of familiarising themselves with what the freedom of speech duty requires of them.

<sup>194</sup> ASHE data shows that the hourly wage for a senior manager is £26.52 - Occupation (2digit SOC) – ASHE: table 2 (2016) (<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/occupation2digitsocashetable2>)

All ASHE data is uprated to 2017 prices using OBR RPIX estimates for Jan-Mar quarter – published in March 2017. This means a 2017 hourly wage for a senior manager of £27.26.

Then we include a non-wage cost of 19.8%. (Eurostat, Labour costs per hour in EUR, 2004-2014, whole economy excluding agriculture and public administration, [http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Labour\\_costs\\_per\\_hour\\_in\\_EUR,\\_2004-2014\\_whole\\_economy\\_excluding\\_agriculture\\_and\\_public\\_administration.png](http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Labour_costs_per_hour_in_EUR,_2004-2014_whole_economy_excluding_agriculture_and_public_administration.png)). More up to date figures are available; however, we use 19.8% to be consistent with the previous Impact Assessments for the Higher Education and Research Act. This gives us the hourly rate of a senior manager in 2017 including non-wage costs of £33.41.

<sup>195</sup> £33.41\*28hrs=£924.38

<sup>196</sup> No additional information available to inform the best estimate and as such the mid- point was used

<sup>197</sup> An average of high and low estimates.

47. Table 5 shows that on average survey respondents spent a total of 3 days to write a code of practice, which again tended to be done by senior managers.

**Table 5: Number of days needed for a HE provider to write a code of practice.**

	Low	Median	High	Mean
Write a code of practice (No. days)	0.5	3	5	3

48. Survey respondents estimated, on average, that writing a code of practice would cost their institution £1,649<sup>198</sup>. We take this as our high estimate. Again, using ASHE data, the hourly rate of a senior manager is £33.41, (corresponding to an estimated 7.5 hour daily rate of £250.58<sup>199</sup>) which indicates an average cost of writing a code of practice of £773<sup>200</sup>. We take this as our low estimate.

49. Accordingly, we take as our best estimate the mid-point between these two values which is £1,211. This is the value which we have used in our impact assessment calculations (see Table 6 below).

**Table 6: High/Best/Low estimates of the cost of writing a code of practice**

	Low estimate	Best estimate <sup>201</sup>	High estimate
Cost of writing a code	£773	£1,211	£1,649

#### *Cost of signing off a code of practice*

50. The survey results indicate that it is usual for a member of senior management to sign off a code of practice before it is issued. We have assumed that sign off will be undertaken by the head of the institution or the Vice Chancellor. A code of practice is typically about six pages long. We estimate that a six-page document will take one hour of a senior manager's time to read, fully understand and sign off. As a member of senior management writes the code of practice, we estimate a short sign off time as it is assumed a Vice Chancellor will rely on the senior manager's judgment.

<sup>198</sup> An average of each surveyed providers' estimate of the cost to their institution of writing a code of practice.

<sup>199</sup> Daily rate of a senior manager is calculated by multiplying the hourly rate by 7.5, as a working day is, on average 7.5 hours long.

<sup>200</sup> £250.58\*3days=£772.64

<sup>201</sup> An average of high and low estimates.

51. According to the University College Union (UCU)<sup>202</sup>, the hourly rate of a Vice Chancellor in the sector is £142.48. Including non-wage costs of 19.8%<sup>203</sup> a Vice Chancellors hourly rate is £170.69<sup>204</sup>. Using this information, we estimate that the cost of signing off a code of practice is £170.69<sup>205</sup>. This is likely to be an overestimate as the salary estimate is based on Vice Chancellors in universities, whereas the majority of providers newly subject to the Duty will be smaller institutions who are likely to pay their staff, on average, less.

*Cost of issuing a code of practice*<sup>206</sup>

52. The survey results indicate that on average HE providers estimated it would cost £692<sup>207</sup> to issue a code of practice including the cost of any staff time, for example by publishing it on their institution’s website and intranet.

*Cost of updating a code of practice*

53. The survey results indicate that on average a HE provider updates or would expect to update their code of practice every two years.

54. Survey respondents indicate that on average updating a code of practice would take nine hours. The majority of respondents also stated that the task of updating a code of practice was undertaken by middle managers.

**Table 7: Number of hours needed for a HE provider to update a code of practice.**

	Low	Median	High	Mean
Update a code of practice (No. hours)	3	6	21.5	9

<sup>202</sup> UCU. (2017). *Transparency at the top*. Available: <https://www.ucu.org.uk/vcpay>.

<sup>203</sup> Eurostat, Labour costs per hour in EUR, 2004-2014, whole economy excluding agriculture and public administration, [http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Labour\\_costs\\_per\\_hour\\_in\\_EUR,\\_2004-2014\\_whole\\_economy\\_excluding\\_agriculture\\_and\\_public\\_administration.png](http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Labour_costs_per_hour_in_EUR,_2004-2014_whole_economy_excluding_agriculture_and_public_administration.png)). More up to date figures are available; however, we use 19.8% to be consistent with the previous Impact Assessments for the Higher Education and Research Act.

<sup>204</sup> £142.48\*1.198=£170.69

<sup>205</sup> £170.69\*1hr=£170.69

<sup>206</sup> We did not ask providers their estimation of any staff time or level of staff involved in issuing a code of practice – therefore there is no estimation of cost using ASHE data here.

<sup>207</sup> An average of each surveyed providers’ estimate of the cost to their institution of issuing a code of practice.

55. Survey respondents estimated that, on average, updating the code of practice would cost their institution £684<sup>208</sup>, which would be incurred every 2 years. Using this information the cost of updating a code of practice is estimated to be £342<sup>209</sup> per year per HE provider. We take this as our high estimate.
56. The hourly rate of a middle manager is estimated as £20.67<sup>210</sup> using ASHE data. Again, assuming that providers update their code of practice every 2 years, we estimate the cost of updating a code of practice is £94<sup>211</sup> per year per HE provider. We take this as our low estimate.
57. Our best estimate is taken as the midpoint between these two values, which is £218. This is the value which we have used in our impact assessment calculations (see Table 8 below).

**Table 8: High/Best/Low estimates of the cost of updating a code of practice**

	Low estimate	Best estimate <sup>212</sup>	High estimate
Cost of updating a code of practice	£94	£218	£342

*Cost of signing off any update to a code of practice*

58. Our survey suggests that that signing off an updated code of practice, before it is issued, will be undertaken by a senior manager. We assume this to be the head of

<sup>208</sup> An average of each surveyed providers' estimate of the cost to their institution of updating their code of practice.

<sup>209</sup> £683.50/2=£341.75 the figure is divided by 2 to gain the yearly cost to providers as survey evidence indicated that on average providers updates their code of practice every two years.

<sup>210</sup> ASHE data shows that the hourly wage for a middle manager is £16.41 - Occupation (2digit SOC) – ASHE: table 2 (2016) (<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/occupation2digitsocashetable2>)

All ASHE data is updated to 2017 prices using OBR RPIX estimates for Jan-Mar quarter – published in March 2017. This means a 2017 hourly wage for a middle manager of £17.26

Then we include a non-wage cost of 19.8%. (Eurostat, Labour costs per hour in EUR, 2004-2014, whole economy excluding agriculture and public administration, [http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Labour\\_costs\\_per\\_hour\\_in\\_EUR,\\_2004-2014\\_whole\\_economy\\_excluding\\_agriculture\\_and\\_public\\_administration.png](http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Labour_costs_per_hour_in_EUR,_2004-2014_whole_economy_excluding_agriculture_and_public_administration.png)). More up to date figures are available; however, we use 19.8% to be consistent with the previous Impact Assessments for the Higher Education and Research Act. This gives us the hourly rate of a middle manager in 2017 including non-wage costs of £20.67.

<sup>211</sup> (£20.67\*9hrs)/2=£94.33 the figure is divided by 2 to gain the yearly cost to providers as survey evidence indicated that on average providers updates their code of practice every two years.

<sup>212</sup> An average of high and low estimates.



an institution or the Vice Chancellor. A code of practice is typically about six pages long. We estimate this will take one hour of a senior manager's time to read, fully understand and sign off. We estimate that it will take the same amount of time for a Vice Chancellor to sign off an update as it would to sign off the original. This is because updates take place, on average, once every two years, so they will need to familiarise themselves with the whole document again during the update, as it will have been 2 years since they have seen the document last.

59. According to UCU<sup>213</sup>, the hourly rate of a Vice Chancellor in the sector is £142.48. Including non-wage costs of 19.8%<sup>214</sup> a Vice Chancellors hourly rate is £170.69<sup>215</sup>.

60. On average HE providers update their code of practice every 2 years. Using this information the cost of signing off an updated code of practice is £85<sup>216</sup> per year per HE provider. This is likely to be an over estimate as the salary estimate is based on Vice Chancellors in universities, whereas the majority of providers newly subject to the Duty will be smaller institutions who are likely to pay their staff, on average, less.

#### *Cost of issuing an updated code of practice*

61. The survey responses suggest that on average it costs HE providers £1,650<sup>217</sup> to issue an updated code of practice. This cost includes the cost of any relevant staff time and any costs associated with publishing it on their institution's website and intranet.

62. On average, HE providers indicated that they update their code of practice once every 2 years. Using this information the cost of issuing an updated code of practice is £825<sup>218</sup> per year per HE provider.

#### *Cost of enforcement*

63. Under the Duty, HE providers are required to take reasonably practicable steps to ensure that their institution's code of practice is complied with. The survey asked

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<sup>213</sup> UCU. (2017). *Transparency at the top*. Available: <https://www.ucu.org.uk/vcpay>.

<sup>214</sup> Eurostat, Labour costs per hour in EUR, 2004-2014, whole economy excluding agriculture and public administration, [http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Labour\\_costs\\_per\\_hour\\_in\\_EUR,\\_2004-2014\\_whole\\_economy\\_excluding\\_agriculture\\_and\\_public\\_administration.png](http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Labour_costs_per_hour_in_EUR,_2004-2014_whole_economy_excluding_agriculture_and_public_administration.png)). More up to date figures are available; however, we use 19.8% to be consistent with the previous Impact Assessments for the Higher Education and Research Act.

<sup>215</sup> £142.48\*19.8%=£170.69

<sup>216</sup> (1hr\*£170.69)/2=£85.34 the figure is divided (by 2) to gain the yearly cost to providers as survey evidence indicated that on average providers updates their code of practice every two years.

<sup>217</sup> An average of each surveyed providers' estimate of the cost to their institution of issuing an updated code of practice.

<sup>218</sup> £1,650.00/2=£825.00 the figure is divided by 2 to gain the yearly cost to providers as survey evidence indicated that on average providers updates their code of practice every two years.

HE providers to state what type of actions are taken to enforce the code of practice. Some of the responses included:

- a) Monitoring any events/talks taking place at the institution.
- b) Keeping up to date with which speakers will be attending and what topics they will cover.
- c) General staff communication on the requirements of the Duty (e.g. all staff emails).
- d) Holding safeguarding working groups.

64. Surveyed HE providers were asked to estimate the cost to their institution of compliance with their code of practice in the last academic year. On average survey respondents estimated that their annual cost of enforcement was £1,022<sup>219</sup>.

#### *Total aggregate compliance costs to HE sector*

65. Table 9 below shows the numbers and cumulative number of HE providers we have estimated<sup>220</sup> to be subject to the freedom of speech duty in 2018/19, the year providers will register with the OfS and become subject to the Duty, through to 2027/28.

66. Total aggregate initial compliance costs are estimated by multiplying the number of providers newly in scope of the Duty by the average estimate of initial compliance costs, £4,714<sup>221</sup>. Total aggregate ongoing compliance costs are estimated by multiplying the cumulative number of providers newly in scope by the average estimate of ongoing compliance costs, £2,151. Both set of estimates are reported in Table 9 below.

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<sup>219</sup> An average of each surveyed providers' estimate of the cost to their institution per year of enforcing their code of practice.

<sup>220</sup> Further details of the HE provider estimate modelling is provided in a technical note. This has been supplied separately as it underpins all of the HE provider estimates in the HERA (Higher Education and Research Act) enactment Impact Assessments.

<sup>221</sup> Assuming the same average compliance costs each year for each provider.

**Table 9: Number of HE providers newly subject to the Duty over ten years<sup>222</sup> and total aggregate initial and ongoing compliance costs.**

	YR1	YR2	YR3	YR4	YR5	YR6	YR7	YR8	YR9	YR10
Number of providers newly in scope each year	273	45	44	44	44	41	38	35	33	31
Total aggregate initial compliance costs (£m)	1.01	0.17	0.16	0.16	0.16	0.15	0.14	0.13	0.12	0.11
Cumulative number of providers newly in scope <sup>223</sup>	273	311	348	383	419	450	479	504	527	549
Total aggregate ongoing compliance costs (£m)	0.28	0.63	0.71	0.78	0.86	0.93	1.00	1.06	1.11	1.16

### *Total cost to students*

67. There are no additional costs to students from the Duty.

### *Total cost to government*

68. The Duty will be self-regulated by the providers with no direct enforcement from government; therefore, there will be no additional costs to government from the freedom of speech duty.

### *Non-monetised costs*

69. There are no non-monetised costs to complying with the Duty.

## **Benefits**

### *Monetised benefits*

70. It is not possible to monetise the benefits due to a lack of evidence enabling us to quantify the impact of the legislation. However, the potential benefits are believed to be substantial, as illustrated below.

### *Non-monetised benefits*

71. Freedom of speech is a fundamental principle in HE and promotes a culture where students learn the skills of critical thinking, challenge and debate. It helps to expose

<sup>222</sup> Further details of the HE provider estimate modelling is provided in Annex A. This underpins all of the HE provider estimates in the HERA (Higher Education and Research Act) enactment Impact Assessments.

<sup>223</sup> Cumulative total (row 3 –table 9) is not simply a sum of row 1 as we assume that a number of providers each year will not continue to be registered with the OfS.

individuals to ideas or subjects they would otherwise not have known about, which allows students to understand a wider range of issues and develop frameworks for thinking about and debating these issues effectively.

72. It also supports a wider public interest because academic, political and wider civic debate helps improve outcomes for the economy and society. Debates in HE are often at the forefront of new ideas or constructive challenges to conventional thinking which, in turn, can enable citizens, communities and government to make better decisions about the key issues they face. Freedom of speech in HE can also lead to a variety of other benefits for society such as the robust confrontation of harmful ideas or by enabling a better understanding of cultural diversity

## **Rationale and evidence that justifies the level of analysis used in the IA (proportionality approach)**

73. This policy has the relatively simple aim of bringing the scope of the Duty up to date. It aims to ensure HE providers continue to be subject to the Duty under the new definitions created by the Act and to expand the scope to create a level playing field for all HE providers.
74. The policy does not create any additional burden on businesses currently under the scope of the Duty.
75. The policy does create a small cost burden to those who come in to scope. This includes registered APs and Further Education Colleges who provide HE courses. In total we estimate 273 additional HE providers will be subject to the Duty, in the first year of the OfS (2018/19), building to 549 HE providers in 2027/28.
76. In the absence of sufficient existing evidence allowing us to calculate the cost to new HE providers subject to the Duty, we have carried out a survey discussing the costs on different parties, and applied this evidence. We selected those who are already subject to the Duty and providers of a similar size to those we expect to come under the Duty after the Amendment comes into force. We believe this approach to be proportional as the costs to businesses are expected to be low. Response rate to the survey was low (20 per cent) which itself may be an indicator that providers do not view this amendment to the Bill as likely to result in significant cost.

## **Risks and assumptions**

77. A key assumption in the Impact Assessment is that the cost of updating and enforcing a code of practice would be similar for all HE providers, and this has been sufficiently captured in the responses to the survey. The cost of any updates and

enforcement for each HE provider is estimated using information supplied by the providers who are already under the scope of the Duty. These tend to be larger institutions, offering a wider range of subjects, compared to some of the smaller and more specialist Alternative Providers that will come under the scope due to the Amendment. In practice, we would expect costs to be proportional to provider size meaning that smaller providers would incur lower costs than higher providers.

78. The OfS and the new regulatory framework will be established in the academic year 2018/19. All estimated figures of HE providers who will be newly under the scope of the Duty are based on estimated figures of provider registration to the OfS<sup>224</sup>.
79. As survey results indicate, some HE providers currently not in scope of the Duty, already comply voluntarily, producing and enforcing a published code of practice. We have not taken this into account in our cost calculations. Therefore, we can assume that any costs are likely to be an overestimate, as many providers will face smaller first year costs as they are already familiar with the Duty and have a published code of practice.

## Small and Micro Business Assessment

80. A micro business is defined as having 0-9 employees and a small business 10-49 employees. In HE, the size of the provider is usually based on the size of its student population, as it is considered more relevant than employee numbers. For example, institutions with the same number of employees may have significantly different student populations, and therefore greatly vary in size. However, for the purposes of the Small and Micro Business Assessment, we look at the number of employees at each provider.
81. All Higher Education Institutions, which we currently estimate as being 132 institutions in 2018/19 estimates, and the majority of Further Education Colleges, estimated at 206 colleges are already subject to the Duty under section 43 of the Education (No. 2) Act 1986.
82. We estimate that a further 238 APs and 35 Further Education Colleges will become subject to the Duty due to the Amendment in 2018/19.
- a) 41 APs as 'approved (fee cap)' HE providers
  - b) 129 APs as 'approved' HE providers
  - c) 68 APs as 'registered basic' HE providers
  - d) 35 Further Education Colleges as 'registered basic' HE providers<sup>225</sup>.

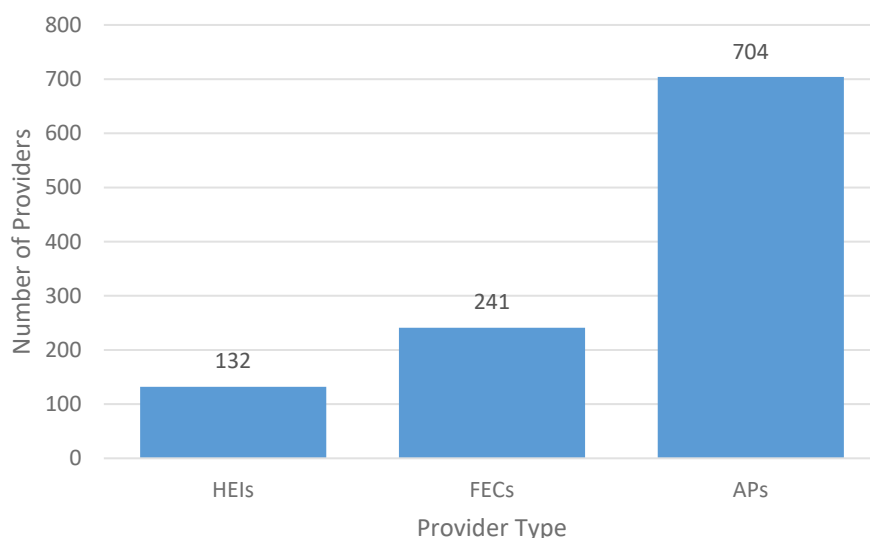
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<sup>224</sup> Further details of the HE provider estimate modelling is provided in a technical note. This has been supplied separately as it underpins all of the HE provider estimates in the HERA (Higher Education and Research Act) enactment Impact Assessments.

<sup>225</sup> Based on the assumption that the OfS will use the categories in the White Paper

83. Analysis of the Further Education workforce data for England report shows that the average college in England has 383 FTE staff. However, Further Education Colleges vary significantly in size and so the impacts of the Duty may differ significantly between them.
84. According to a Business Innovation and Skills (2016)<sup>226</sup> survey of APs (APs), 75% of all APs employed ten or fewer full-time equivalent staff, and 95% of APs had 50 employees or fewer. The AP survey included all APs, which in the new regulatory system would include many out of scope of the Duty, as they may elect to remain unregistered. However, as we do not hold further detail of the split between small or micro businesses in or out of scope of the proposals, we assume that 75% of all APs in scope of the proposal are classed as micro and 20% classed as small. Our expectation is that this is an overestimate.
85. Figure 1 demonstrates that there are a large number of APs in the sector compared to the number of HEIs and FECs. However, Figure 2 shows that although there are a large number of APs they only had approximately 12% of the total number of HE students in 2015/16 indicating that they are likely to be small or micro-businesses.

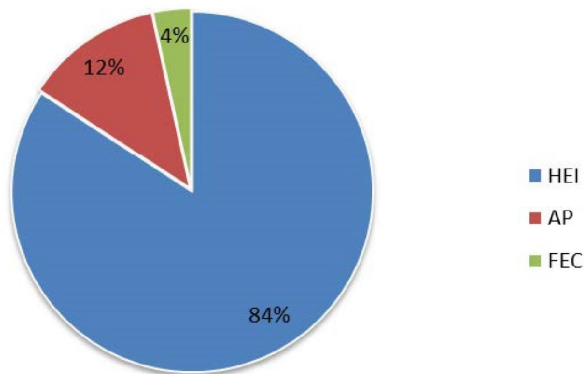
**Figure 1 – Number of providers in each category, 2015/16<sup>227</sup>**



<sup>226</sup> BIS (2016) *Understanding the Market of Alternative Providers and their Students in 2014*. Available: <https://www.gov.uk/government/publications/alternative-providers-of-higher-education-the-market-and-students-in-2014>

<sup>227</sup> HEFCE 2015/16

**Figure 2 - Breakdown of higher education students in 2014/15, by type of provider<sup>228</sup>**



86. Full or partial exemption of micro or small providers from being subject to the Duty would significantly reduce the effectiveness of the policy. This is because it would undermine the policy objective of creating a level playing field for all providers of HE, ensuring that a legal duty around freedom of speech applies more consistently across the sector.
87. The cost per provider of producing a code of practice (£3,692 transition costs best estimate) and keeping up to date this code of practice (£1,128 yearly cost from year 2 best estimate) is minimal. Our expectation is that the cost of enforcement will be proportional to the size of the institution and so less for smaller and micro businesses than set out in our central assumptions. For example, enforcement costs associated with communicating information around the Duty will be greater the greater the number of staff members working in the institution.
88. We do not believe that varying the requirements by the size of the business will achieve the policy objectives. Adopting such an approach would create an uneven playing field between institutions and mean that a legal duty around freedom of speech is applied unevenly throughout the sector. This would make it more difficult for students and staff to have comparable assurances about their ability to express themselves freely within the law.
89. Overall, there will be a greater relative, but smaller absolute, burden on small and micro businesses because of the minimum requirement to produce and keep an up to date code of practice. However, this is expected to be minimal. It is not possible to mitigate against these costs by introducing variations between institutions, for example on the basis of size or teaching staff, as it will undermine the policy objectives.

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<sup>228</sup> HEFCE 2014/15

## Freedom of Speech Duty Survey

This survey was conducted in March-April 2017. The average length time it took to complete the survey was 20 minutes and there was a response rate of 20 per cent.

1. To the best of your knowledge, is your institution currently subject to the freedom of speech duty?

The freedom of speech duty requires certain HE providers to write and keep up to date a code of practice, which is typically a document about 6 pages long, which outlines procedures to be followed in connection with meetings and activities taking place on their premises, and take reasonable steps to ensure that it is complied with.

2. Producing a code of practice

- a. **If your institution is not subject to the freedom of speech duty**, does your institution produce and publish a code of practice voluntarily?
- b. **If your institution is subject to the freedom of speech duty**, does your institution currently have a published code of practice?

3. Familiarisation.

- a. **If your institution is not subject to the freedom of speech duty**, approximately how many hours of staff time would you expect it to take to familiarise yourself with what the freedom of speech duty required of your institution?
- b. **If your institution is subject to the freedom of speech duty**, approximately how many hours of staff time did it take to familiarise yourself with what the freedom of speech duty required from your institution?

4. What level of staff would carry out the majority of this work?

- a. Entry level
- b. Specialists
- c. Middle managers
- d. Senior managers

5. In your estimation what would be the cost to your institution of familiarising yourself with what the freedom of speech duty required of your institution, including the cost of any staff time?

6. Writing a code of practice.



- a. **If your institution does not have a code of practice**, approximately, how many days of staff time do you believe would be needed to write a code of practice.
  - b. **If your institution does have a code of practice**, approximately, how many days of staff time did it take to write your institutions code of practice?
7. What level of staff would carry out the majority of this work?
- a. Entry level
  - b. Specialists
  - c. Middle managers
  - d. Senior managers
8. In your estimation, what would be the cost to your institution of writing a code of practice, including the cost of any staff time?

### To be answered by those without a code of practice

9. Would a code of practice need sign off from senior management before being issued?
10. In your estimation what would be the cost of issuing a code of practice including the cost of any staff time? For example, by publishing on your institution's website?

### To be answered by those already in scope of the freedom of speech duty<sup>229</sup>.

The freedom of speech duty requires HE providers to issue and keep up to date a code of practice.

11. Does your code of practice need to be signed off by senior management before being issued?
12. In your estimation, what would be the cost of issuing a code of practice, including the cost of any staff time? For example, by publishing on your institution's website?
13. How often does your institution update its code of practice?
14. Approximately, how many hours of staff time do you believe it takes to update the code of practice?

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<sup>229</sup> We do not ask institutions that do not comply with the freedom of speech duty about enforcement. We believe that they would not be able to supply suitable estimates.

15. What level of staff would carry out the majority of this work?

- a. Entry level
- b. Specialists
- c. Middle managers
- d. Senior managers

16. In your estimation, what would be the total cost of updating your institutions code of practice, including the cost of any staff time?

17. Does any update need sign off from a member of senior management?

18. In your estimation what would be the cost of issuing an updated code of practice, including the cost of any staff time? For example, by publishing on your institution's website?

The freedom of speech duty requires institutions to take steps that are reasonably practical to ensure that the requirements of the code of practice for are complied with.

19. What activities are normally required to enforce your institutions code of practice?

20. In your estimation, what was the cost to the institutions of enforcing the code in the last academic year?

<b>Regulatory Triage Assessment</b>	
<b>Title of measure</b>	Student transfer duty
<b>Lead Department/Agency</b>	Department for Education
<b>Expected date of implementation</b>	2018
<b>Origin</b>	Domestic
<b>Date</b>	30/08/2017
<b>Departmental Triage Assessment</b>	Low-cost regulation (fast-track)
<b>Rationale for intervention and intended effects</b>	
<p>In some cases, students may wish, or find it necessary, to transfer from one Higher Education (HE) course or provider to another. A recent Call for Evidence revealed there was an information gap for students about the student transfer opportunities available to them. The Government intends to address this information gap and help create a more flexible HE system that better meets the needs of the students.</p>	
<b>Viable policy options (including alternatives to regulation)</b>	
<p>Policy Option 1: Introduce the Student Transfer Duty (preferred). Place a duty on the Office for Students (OfS) to monitor and report on the provision of arrangements for student transfer and their take-up; and to facilitate, encourage and promote awareness of student transfer. It is assumed this will apply to all 'Approved' HE providers in the new regulatory landscape that will exist from 2018/19 onwards.</p>	
<b>Initial assessment of impact on business</b>	
<p>The burden of the Duty falls to the OfS and the final costs and benefits of this reform will depend on how it implements the Duty. These decisions will be made following consultation.</p> <p>There are two possible costs arising for providers. First, the cost of collecting and supplying data and information to the OfS so it can estimate transfer rates and set out current practice. Our best estimate, based on the OfS focusing on 'Approved' HE providers, is that this will lead to <u>no additional cost to providers</u> since such providers already collect and supply such data. The second potential cost is the OfS's employment of resources to undertake the Duty. We assume the OfS would employ two employees at Grade 7 level to undertake the work at a cost of approximately £0.12m per annum, funded through the OfS's levy on HE providers.</p> <p>Our best estimate is that the Duty will cost providers £0.12m in Year 1 (the other years will also be the same in real terms).</p> <p>We have also considered a hypothetical upper bound estimate to satisfy ourselves that this change is suitable for the fast-track clearance process. This is based on the</p>	

OfS discharging its duty more widely and such that it includes all providers registered with the OfS. We judge it unlikely the OfS will find this a proportionate implementation of the Duty, but it is anticipated that the OfS will wish to decide after engagement with the sector. In this scenario a Registered - basic provider would need to meet a one-off £5,000 set up cost and £2,500 in annual data collection costs. In Year 1, we estimate there will be 106 such providers, implying a total cost of £0.77m. Costs would then fall in future years in line with a falling number of new Registered - basic providers. OfS employment costs are expected to be the same at £0.12m. This means the maximum potential cost will be around £0.89m – below the fast-track threshold of £1million.

These costs will be offset by benefits to the economy of a better matching of students to courses and more HE completers. This benefit will extend to employers through an increase in the skilled labour supply.

**BIT status/score**

**Rationale for Triage rating**

The Department believes that this policy is suitable for fast-track because there is clear evidence that the policy will have an annual gross cost to business (i.e. HE providers) of less than £1m in all appraisal years. Furthermore, the policy only imposes costs on providers and not wider.

**Departmental signoff (SCS):** Stephen Meredith      Date: 18/07/2017

**Economist signoff (*senior analyst*):** Simon Palmer      Date: 18/07/2017

**Better Regulation Unit signoff:** John Hubbard      Date: 26/07/2017

## Problem Under Consideration

1. Higher education students seek to ensure that the course and institution they choose best fits their needs and career aspirations, and offers them the best learning experience and employment outcomes.
2. In some cases, students may wish, or find it necessary, to transfer from one course or institution to another. The reasons for this are varied. For example, a student may realise that the course, the qualification, the institution or the wider student experience does not meet their expectations<sup>230</sup>.
3. Alternatively, the personal circumstances of the student may change. For example, during their course, a student might become a carer or a parent. As a result, they may need to take time out from their studies, or move to a different part of the country to adapt to their new responsibilities.
4. Students may face the closure of their course, subject, campus or in extreme cases the provider itself may require the student to move to a different institution which may not be in the same geographical area.
5. It is therefore vital that Government is able to monitor effectively what student transfer schemes are in place and the extent to which they are used. Improved information on student transfer can lead to better policy-making and create incentives for institutions to improve outcomes for students.
6. A micro business is defined as having 0-9 employees and a small business 10-49 employees. In HE, the size of the provider is usually based on the size of its student population, as it is considered more relevant than employee numbers. For example, institutions with the same number of employees may have significantly different student populations, and therefore greatly vary in size. However, for the purposes of the Small and Micro Business Assessment, we look at the number of employees at each provider.

## Rationale for Intervention

7. There are likely to be occasions where, students may wish, or find it necessary, to transfer from one course or institution to another. If students are not able to transfer smoothly and quickly to another course or institution then this may have a negative impact on the value for money outcomes of students, employers and taxpayers.

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<sup>230</sup> Research by the Sutton Trust indicates that many students from under-represented groups attend institutions for which they are over-qualified. This is particularly true of students who are the first in their family to attend university. <http://www.suttontrust.com/wp-content/uploads/2004/08/Missing-3000-Report-2.pdf>

8. The Government received over 4,500 responses to its Call for Evidence on “Accelerated Courses and Switching University or Degree”, which ran over Summer 2016 and provided valuable insight into the barriers to student transfer and how the Government could best support innovation.
9. The Call for Evidence revealed that while 91% of the providers that responded declared they already had a formal student transfer system in place, many students highlighted a lack of available information about the student transfer opportunities available to them.
10. More specifically, 20% of student respondents were unaware of the option to switch to another provider, while 13% did not know they could switch degree. 60% of student respondents (both those who had transferred and those who had not) said more information would help their decision.
11. Provisions for student transfer were not included in the Higher Education and Research Bill when it was introduced. However, we carefully weighed up the evidence and considered the amendments that were tabled on this issue at earlier stages of the Bill’s passage and the associated debate, and the desirability of having flexible provision to address this issue now and in the future. In response, we tabled an amendment at Report Stage in the House of Lords that would place a Student Transfer Duty on the OfS.
12. The Government believes that this will address the current information gap and encourage greater take-up of transfer opportunities. This will help support flexible learning and lifelong learning, while also increasing the sector’s understanding and appreciation of the demand for student transfer.

## Policy Objectives

13. One of the Government’s overarching aims of the Higher Education and Research Act is to encourage more flexible provision to meet students’ diverse needs. The specific policy objectives are as follows:
  - Promote an HE system which is flexible enough to adapt to changes in students’ circumstances. It should enable students to have the flexibility to make the best choices to meet their needs, even if they are part way through studying.
  - Encourage a dynamic higher education sector where students can actively challenge HE providers to offer teaching excellence and value for money.
  - Improve monitoring and reporting on student transfer to address the information gap that we have at present which will help increase the HE sector and the Government’s understanding and appreciation of the demand for student transfer.

14. The ability to transfer can provide flexibility for the balance of work, life and study, and can offer new opportunities for part-time and mature learners. It should also benefit the wider economy by helping students to move to courses better suited to their needs (and so support greater skills acquisition) and reduce students dropping out of Higher Education altogether where their first course choice proves unsuitable.

## Policy Options

15. The options under consideration are:

- Policy Option 0: **Do Nothing.**
- Policy Option 1: **Introduce the Student Transfer Duty (preferred).** Amend the HE and Research Bill to place a duty on the Office for Students (OfS) to monitor and report on the provision of arrangements for student transfer and their take-up; and to facilitate, encourage and promote awareness of student transfer. The OfS will be required to include a summary of its findings in its annual report.

## Expected level of business impact

16. Under the Duty the OfS can choose which providers or groups of providers to monitor. It also has the freedom to choose how it facilitates, encourages and promotes awareness of student transfer.

17. All providers registered with the OfS are potentially in scope of the Duty. Table 1 sets out our planning assumption of the OfS provider numbers from 2019/20 to 2028/29. These numbers are used across the Impact Assessments that accompany the Higher Education and Research Act<sup>231</sup>. Table 1 separates providers registered to the OfS by category, in our analysis 'Approved' refers to providers registered as Approved and Approved (fee cap) and therefore suitable for its students to attract taxpayer funded student finance.

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<sup>231</sup> A description of our OfS provider number methodology will accompany an overarching document which includes all impact assessments written for the Higher Education and Research Act.

**Table 1: OfS provider forecasts, 2019/20 to 2028/29**

	Registered - basic	'Approved' <sup>232</sup>	Total
<b>2019/20</b>	103	508	611
<b>2020/21</b>	120	531	651
<b>2021/22</b>	134	555	689
<b>2022/23</b>	146	580	726
<b>2023/24</b>	157	606	763
<b>2024/25</b>	16	631	796
<b>2025/26</b>	171	654	826
<b>2026/27</b>	176	677	853
<b>2027/28</b>	180	698	877
<b>2028/29</b>	182	718	900

18. The burden of the Duty falls to the OfS. However, it is possible that some costs are passed on to providers. There are two possible ways the Duty imposes a cost to providers:

- a) **Collecting and supplying data to the OfS.** Under the Duty the OfS must monitor student transfer. To do this they need to collect data from providers, which may impose a cost on the provider, particularly if this is new data which has not previously been collected.
- b) **OfS registration fees.** The OfS will incur some costs complying with the Duty. They will need staff resource to analyse data and publish their findings. They must also facilitate, encourage and promote awareness of student transfer. This will add to the running cost of the OfS, which will be funded primarily through registration fees for providers.

## Total Cost

19. Table 2 summarises our estimated gross cost to providers in Year 1. Our best estimate for the cost to HE providers in Year 1 is £0.12m, which is comfortably under £1m, and does not change in subsequent years. This is based on the OfS focusing

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<sup>232</sup> In this impact assessment 'Approved' refers to providers in the Approved and Approved (fee cap) categories.



its monitoring and reporting activities on 'Approved' providers within the new regulatory landscape.

20. We have also developed an upper bound cost scenario, which is £0.89m in Year 1 and lower thereafter, which means it is also under the £1m fast-track threshold. This is based on the OfS monitoring and reporting on all registered providers. We do not expect this to be a likely scenario as Registered - basic providers will not be subject to the same level of monitoring as providers in the 'Approved' categories, but have included it to demonstrate the suitability of this IA for the fast-track approval process.

**Table 2: Estimated expected gross annual cost to providers in Year 1, 2017 prices.**

	Best	High (low probability) scenario
Collecting Data	£0m	£0.77m
OFS Registration Fees	£0.12m	£0.12m
Total	£0.12m	£0.89m

Note: numbers do not add due to rounding.

## Collecting and Supplying Data to the OfS

21. The Higher Education Funding Council for England (HEFCE)<sup>233</sup> has previously measured student transfer. To do this they matched the names, birthdates and postcodes of students across academic years<sup>234</sup>. We anticipate that the OfS will wish to adopt a similar approach to monitoring student transfer behaviour.

22. 'Approved' providers will need to submit student records to the OfS or its designated data body each academic year as a condition of their 'Approved' status. The data they submit is assumed to be similar to what the Higher Education Statistics Authority (HESA) currently collects. This data is adequate to measure student transfer. Therefore, we expect no additional data collecting costs for 'Approved' providers as a result of this duty. It is possible that the OfS may additionally carry out a survey of providers existing transfer policies and practices, but this will be for the OfS to determine and is not expected to generate any significant costs as this information will already be held.

23. We believe that the OfS focusing on 'Approved' providers is the most likely scenario. Students at 'Approved' providers are eligible for student loan funding and there is

<sup>233</sup> <http://www.hefce.ac.uk/analysis/ncr/>.

<sup>234</sup> This is a simplified explanation of their approach, however, they use more advanced techniques to improve matching rates across academic years.

therefore a clearer, wider, public interest in understanding how the sector supports students to find other courses where they find it necessary or preferable to move.

24. Registered - basic providers would not attract funding in the same way. We therefore anticipate the OfS is unlikely to cast the Duty so widely as to include all registered providers, though it is for the OfS to determine whether doing so would be proportionate given the burdens placed on Registered - basic providers.
25. For illustrative purposes, we considered a high cost scenario which assumes that all providers are required to submit data to the OfS to measure student transfers (e.g. name, birthdate and postcode of students). The purpose of this exercise is to show that even if the OfS did request student transfer data from Registered - basic providers the gross cost would still be less than £1m per year (the fast-track threshold).
26. Survey data suggests that the average number of students at an Alternative Provider is around 350, however, given our desire to consider an upper bound cost estimate, we assume that this could rise to 500<sup>235</sup>. We assume that the set-up cost to a registered provider of having systems to gather and disseminate the necessary information is £5,000<sup>236</sup> per provider and that the cost of data collection is £5 per student<sup>237</sup>. This means an average cost to a Registered - basic provider to collect and supply data to the OfS is an estimated £7,500 in their first year of registering and £2,500 in subsequent years.
27. In Year 1 (2019/20) our internal forecasts estimate that there are 103 Registered - basic providers (see Table 2), implying a total cost to these providers for collecting and supplying data to the OfS of £0.77m in Year 1 (this includes set up and data collection costs). Year 1 is the most expensive year because it is when most Registered - basic providers register with the OfS, with smaller numbers registering in subsequent years. It is worth restating that this £0.77m figure is an upper bound calculated for illustrative purposes. We believe it unlikely that the OfS would find it proportionate to interpret the Duty in this way.

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<sup>235</sup> The vast majority of Registered - basic providers are expected to be what are currently known as Alternative Providers (the other providers will be Further Education Colleges). A 2016 report by the Department of Business, Innovation and Skills estimates that the average size of an Alternative Provider is 348 students (excluding an outlier). Therefore, 500 students is likely to be an overestimate.

<sup>236</sup> £5,000 is a high estimate because 'Registered – Basic' providers are already likely to collect the data which the OfS needs (name, birthdate and postcode) to measure student transfer. The set up costs might include having to format the data to OfS' criteria or collecting all the data in one place, which should not be onerous because these providers would be relatively small.

<sup>237</sup> Other Higher Education and Research Bill Impact Assessments have assumed a per student data collection cost of £5 for data more detailed than Name, Date of Birth and Postcode. To get the £5 per student, we assume that data entry for a single student record takes 15 minutes and is quality assured by 2 members of staff. The 15 minutes' estimate is based on the time needed to populate approximately 20 entries. Assumed administration staff costs of £8 per hour plus non-wage costs assumed at 19.8% (Year 1 =  $0.25 \times 2 \times (8 \times 1.198)$ ).

## OFS Registration Fees

28. Under the Duty the OfS must analyse student transfer data and publish their findings. HEFCE have recently undertaken a student transfer measuring exercise and they estimate that it would take approximately two months for the OfS to analyse the data and produce a report in accordance with the Duty.
29. The OfS may also facilitate, encourage and promote awareness of student transfer. If we assume that it takes two Grade 7 level employees (one policy and one analyst) to carry out all the work required to comply with the Duty (including analysing data and producing a report), then the corresponding cost to the OfS would be approximately £0.12m<sup>238</sup> per year. A proportion of this may be passed on to providers via OfS registration fees which are paid for by providers to cover OfS operating costs. It is uncertain the proportion of this which will be covered by operating costs. Therefore, for the purposes of this assessment, we assume 100% to provide an upper estimate.

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<sup>238</sup> 2 x G7 (earning £51,463) x 19.8% non-wage costs = £123,305.35, which is approximately £0.12m. £51,463 is estimate grade cost based of DfE data, for outside of London (where the OfS will be based).

## Annex A: Estimating the number of providers following the reforms

The following shows the forecast impact of proposed Higher Education and Research Bill reforms on the number of providers in the sector. This is summarised in Table A1 below. It looks at the current structure of the HE sector, and recent trends and applies a set of assumptions about how individual HE providers will respond to the reforms. It is important to stress that these estimates are subject to considerable uncertainty, and should be regarded as illustrative of the broad changes we expect. Overall, as a result of the reforms, it is expected that:

- a. **We will give HE providers the opportunity to become ‘Registered’ with the Office for Students; and remove the unnecessary bureaucracy from the system.** As a result, we expect the number of providers recognised (in one of the three Registered categories) by the government, to increase: with 611 in 2019/20, rising up to 900 by 2028/29. Consequently; the number of providers outside the system would decrease from 540 in 2019/20 to 244 by 2028/29.
- b. **A large proportion of providers will become Registered - Basic – which will mean improved oversight of the sector and student protection.** It is expected that 103 providers will enter that category in 2019/20; with total number in this category rising to 182 in 2028/29.
- c. **With the costs, bureaucracy and timescales associated with entering the HE system all reduced, we can expect to see significant entry of alternative providers to the Approved and Approved (Fee Cap) categories** with 170 in 2019/20 and 367 in 2028/29. The increase will include both brand new entrants to HE; those who have previously been put off from seeking regulatory approval and designation, and who have hence been outside the system; those seeking student support for postgraduate courses; and those fulfilling the requirements of their Tier 4 trusted sponsor status.
- d. **We will also promote competition by offering more flexible options for providers to obtain their own Degree Awarding Powers. As a result, we expect far more degree-level providers, currently reliant on incumbent providers to validate their degrees, will choose to award their own degrees.** The number of APs with DAPs is expected to increase from 9 in 2015/16 to 26 in 2019/20; and to 133 by 2028/29, particularly as existing institutions gain their own DAPs and no longer rely on validation arrangements.
- e. **The number of FECs offering HE courses is expected to remain stable throughout – changes to the system will not have very significant effects on them, and majority of FECs already offer HE courses.**

- f. **All providers, currently receiving public funding from HEFCE, are expected to remain in the sector, as they are large and financially stable.**

## Changes from previous estimates

The provider forecasts for the enactment stage impact assessments have been updated from the bill stage, this is to reflect the latest provider data and policy thinking. The main changes are as follows:

- The baseline provider numbers have been updated using the most recent data available.
- The starting year of the provider forecasts has been shifted backwards one year from 2018/19 to 2019/20 because we now know that the OfS's regulatory framework comes into force in 2019/20.
- The proportion of existing designated APs that joined Approved (fee cap) has been lowered due to the latest policy thinking and information from the sector. We originally assumed slightly over 4 in 10 designated APs would join Approved (fee cap), in the new forecasts this is reduced to just under 3 in 10.
- The behaviour of providers applying for Degree Awarding Powers (DAPs) has been remodelled to reflect the latest policy thinking. Compared to the previous forecast, the number of new providers awarded DAPs is slower in the beginning but the growth rate is slightly higher. This leads to a lower number of providers with DAPs at the start, but the numbers steadily catch up over time.

**Table A1: Forecast number of Higher Education providers, 2019/20-2028/29**

	19/20	20/21	21/22	22/23	23/24	24/25	25/26	26/27	27/28	28/29
<b>Outside the system</b>	<b>540</b>	<b>492</b>	<b>448</b>	<b>407</b>	<b>368</b>	<b>335</b>	<b>306</b>	<b>282</b>	<b>262</b>	<b>244</b>
<b>Recognised as in the system</b>	<b>611</b>	<b>651</b>	<b>689</b>	<b>726</b>	<b>763</b>	<b>796</b>	<b>826</b>	<b>853</b>	<b>877</b>	<b>900</b>
<b>Registered</b>	<b>103</b>	<b>120</b>	<b>134</b>	<b>146</b>	<b>157</b>	<b>165</b>	<b>171</b>	<b>176</b>	<b>180</b>	<b>182</b>
APs	68	87	103	116	129	138	146	152	156	160
<i>with DAPs</i>	0	0	0	0	0	0	0	0	0	0
<i>without DAPs</i>	68	87	103	116	129	138	146	152	156	160
FECs	35	33	32	30	29	27	26	24	23	22
HEIs	0	0	0	0	0	0	0	0	0	0
<b>Approved</b>	<b>129</b>	<b>144</b>	<b>159</b>	<b>176</b>	<b>192</b>	<b>208</b>	<b>222</b>	<b>236</b>	<b>249</b>	<b>260</b>
APs	129	144	159	176	192	208	222	236	249	260
<i>with designation and without DAPs</i>	80	86	92	99	106	112	117	122	126	130
<i>with designation and DAPs</i>	15	20	27	33	40	47	54	61	68	75
<i>with Tier 4 only</i>	34	37	40	43	46	49	51	53	54	56
FECs	0	0	0	0	0	0	0	0	0	0
HEIs	0	0	0	0	0	0	0	0	0	0
<b>Approved (fee cap)</b>	<b>379</b>	<b>387</b>	<b>395</b>	<b>404</b>	<b>414</b>	<b>423</b>	<b>432</b>	<b>441</b>	<b>449</b>	<b>457</b>
APs	41	47	54	61	69	77	85	92	99	106
<i>with DAPs</i>	11	16	21	26	32	37	43	48	53	58
<i>without DAPs</i>	30	32	33	35	38	40	42	44	46	48
FECs	206	208	209	211	212	214	215	217	218	219
HEIs	132	132	132	132	132	132	132	132	132	132

# Annex B: Survey of Alternative Providers with designated courses

## Methodology

The survey was conducted over December 2015 – January 2016, to gather Alternative Providers' (APs) views on the policies proposed in the Higher Education Green Paper; as well as their future plans. It has been conducted via an online questionnaire on surveymonkey.com, and was sent to key contacts in all APs that are currently designated for student support. Out of the 111 providers it was sent to, 44 providers have responded, with 35 providers offering complete responses to the survey (32 per cent response rate). Qualitative responses to the questions were treated as confidential and are not included below. For numerical questions about administrative burdens, truncated means are provided (excluding top and bottom 5% of the responses) to ensure the findings are more representative. Responses to questions with fewer than 5 respondents were not provided as not representative.

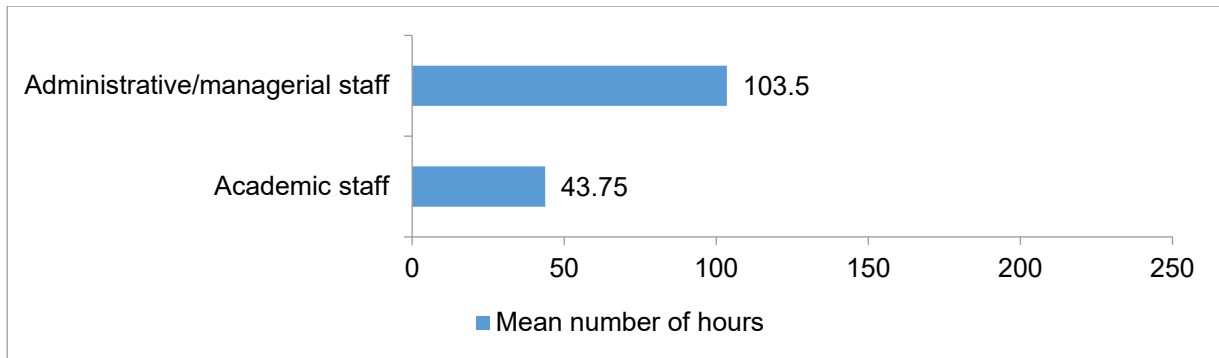
## Findings

### Current position

**Question 1. Did your institution have a specific plan (e.g. documented in institution's business plan) to get more courses designated for student support within the next 5 years?**

Response	% respondents
Yes	46%
No - too burdensome	14%
No - courses not currently designated would not meet the requirements	11%
No - financial return would not be sufficiently large	7%
Not applicable	23%
n	44

**Question 2. Approximately, how many hours of staff time are spent on compliance with annual re-designation requirements on an annual basis?**



**Question 3. Prior to the announcement of reforms in Higher Education Green Paper, did your institution have specific plans to apply for Degree-Awarding Powers within the next 5 years?**

Response	% respondents
Yes	36%
No	64%
n	39

**Question 4. How many hours of staff time in your institution have been spent on obtaining DAPs?**

Insufficient number of responses.

**Future operating model**

[Respondents are explained the reforms suggested in 2015 Higher Education Green Paper, related to streamlining and creating a single route of entry into the sector]



**Question 5. Is your institution planning to get designated under the new system?**

Response	% respondents
Yes	100%
No	0%
n	34

**Question 6. If the system outlined above was implemented, under which model would your institution be more inclined to enter the system?**

Response	% respondents
Model 2a <sup>239</sup>	59%
Model 2b <sup>240</sup>	41%
n	34

**Question 6a. What is the main reason for your choice?**

Model 2a		Model 2b	
Lower administrative burden	58%	<b>Greater amount of student loan funding available</b>	57%
Ability to charge higher (uncapped) fees	32%	<b>Access to teaching grants</b>	7%
Other	11%	<b>Other</b>	36%
n	19	n	14

<sup>239</sup> Here and afterwards – Model 2a was a working title for this category, currently replaced by ‘Approved’.

<sup>240</sup> Model 2b is currently replaced by ‘Approved (fee cap)’

**Question 7. Following the changes to the system, are you planning to apply for Degree-Awarding Powers in the next 5 years?**

<b>Response</b>	<b>% respondents</b>
Yes	59%
No	32%
Not applicable	9%
n	34

### **Impact of changes to the sector**

**Question 8. As a direct result of changes to the system, is your institution more likely to?**

<b>Response</b>	<b>% respondents</b>
Offer more courses designated for government support	62%
Recruit more students to undergraduate courses	73%
Recruit more students to other courses	35%
Have a greater % of students receive government support	39%
Start offering a new/different range of courses	46%
Expand your facilities	62%
Hire new academic staff	73%
n	26

**Question 9. Based on your knowledge of the HE sector, which of the following would you expect following the introduction of reforms?**

<b>Response</b>	<b>% respondents</b>
More new providers being set up	16%
More existing providers entering the system (getting designated)	28%
More existing providers going up to get their own Degree-Awarding Powers	56%
n	32

**Question 10. Currently, there are 129 HEFCE-funded universities and 110 alternative providers with specific course designation. Once the unnecessary barriers to progression are removed, one would expect the sector to reach an “optimal” size, with the overall number of institutions relatively stable. How many institutions do you think are optimal for English higher education sector?**

<b>Response</b>	<b>% respondents</b>
250-300	67%
301-350	17%
351-400	3%
400-500	7%
501+	7%
n	30

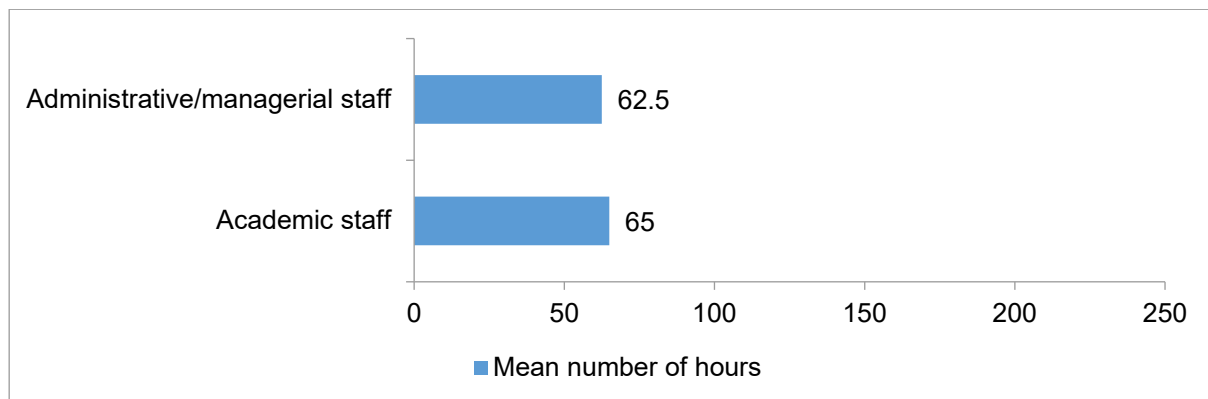
## Contingency plans

[Respondents are explained the reforms suggested in 2015 Higher Education Green Paper, related to student protection in the event of provider exit]

**Question 11. Do you have an existing contingency plan in place that satisfies the above requirements? (Mindful of the fact that the detailed requirements will be subject to consultation and further policy development)**

Response	% respondents
Yes	47%
No	53%
n	34

**Question 12. How many hours of staff time do you believe would be needed to finalise and agree a contingency plan, consistent with the above requirements?**



## Subject specialisation

**Question 13. Are you partnered with any other HE institutions in England (offer joint degrees, work together to develop curriculum)?**

<b>Response</b>	<b>% respondents</b>
Yes - with institutions that complement our provision	21%
Yes - with institutions that offer similar courses	21%
Yes - both	9%
No	49%
n	33

**Question 14. Does your institution have a particular subject specialism?**

<b>Response</b>	<b>% respondents</b>
Yes	82%
No – generalist/offer a range of subjects	18%
n	34

**Question 15. How many institutions in the UK have a similar subject specialism?**

<b>Response</b>	<b>% respondents</b>
More than 50	10%
20-49	14%
10-19	24%
5-9	21%
Fewer than 5	31%
n	29

**Question 16. Are any of the courses taught unique to your institution? (a student would not be able to study a course with a similar curriculum at any other institution in England)**

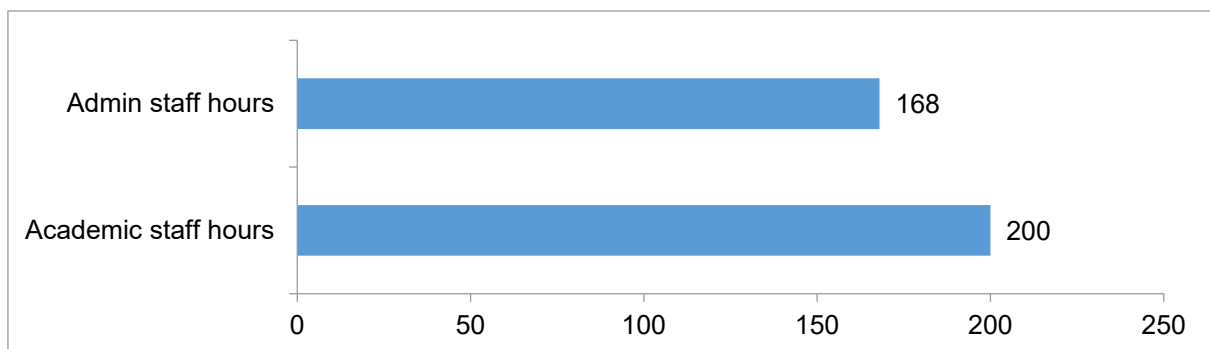
Response	% respondents
Yes	35%
No	65%
n	34

### Course validation

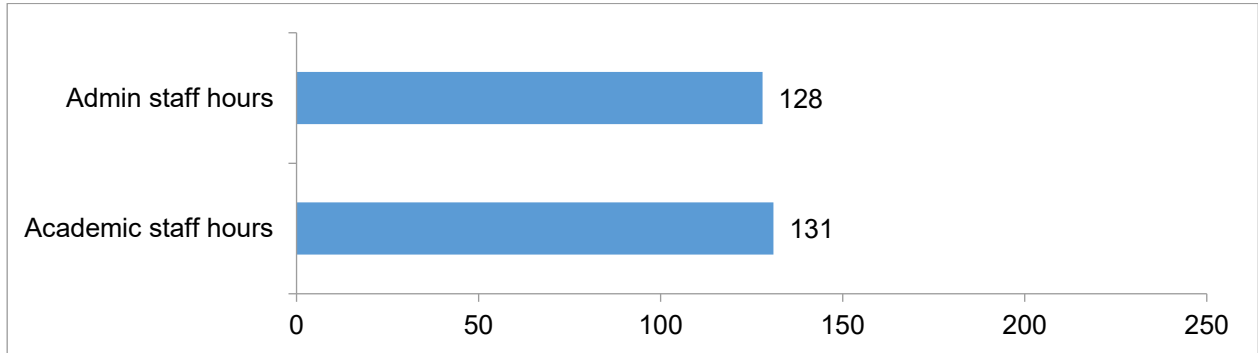
**Question 17. Does your validation contract specify a payment for validation?**

Response	% respondents
Yes	67%
No	33%
n	33

**Question 18. How much staff time (in hours) was spent on finding a validation partner and agreeing the validation contract?**



**Question 19. How much staff time is spent on complying with validation contract conditions (focusing only on things that your institution would not otherwise do)?**



**Question 20. Has your institution ever faced difficulties in obtaining/renewal of a validation agreement?**

Response	% respondents
Yes	36%
No	64%
n	32

### Annual re-designation

**Question 21. What would you expect to happen to the designated courses offered at your institution, if they lost their specific course designation?**

Response	% respondents
Reduction in student numbers	49%
Reduction in course fees	0%
Closure of the course	51%
n	33

**Question 22. Does the uncertainty related to re-designation of your institution's courses have a material effect on your institution?**

<b>Response</b>	<b>% respondents</b>
Yes	82%
No	18%
n	34





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