

Submission by the Higher Education Statistics Agency Limited (“HESA”) in respect of the Higher Education & Research Bill (“the Bill”)

THIS SUBMISSION IS MADE IN RESPECT OF:
SECTIONS 8, 59, 61, AND 103

1. EXECUTIVE SUMMARY

1.1. This submission is made on behalf of HESA.

1.2. HESA is a charitable company limited by guarantee. It was established in 1993 as a shared service for the higher education funding bodies and the sector. It collects information from higher education providers, and shares it with a wide range of data users including higher education providers, higher education funding bodies, and UK Government departments.

1.3. Section 60 of the Bill provides for a body to be designated, under section 60, to collect, process and share higher education information. The designated body will be either HESA itself, or a successor to HESA.

1.4. Having taken specialist information law advice we consider that as drafted the legislation will prevent HESA (or any successor body) from being able to share higher education information as HESA currently does, or as is anticipated by the Data Futures Programme.

1.5. The Data Futures Programme is being funded by all four of the UK higher education funding bodies for the benefit of the UK higher education sector, the anticipated total grant funding being £7.4 million. The purpose of the Programme is to enable HESA to act as a data hub for the UK higher education sector (including any associated UK-wide Government bodies), on the basis that data will be collected once and used many times, thereby reducing administrative burdens on the sector. The Programme was a response to the 2011 White Paper “Students at the Heart of the System”. It is explained in more detail below.

1.6. We consider that the Bill as drafted will restrict the scope for information to be collected once and used many times, and will undermine the Data Futures Programme.

1.7. HESA is working constructively with the Department for Education (“DfE”) to seek to resolve the consequences of the Bill. HESA understands that there may be Government amendments, but we do not yet know the terms of any proposed amendments, and how far they will address our concerns. Given the extent of the potential consequences on the

higher education information flow to the sector and to government bodies we consider it appropriate to also make a submission directly to the Bill Committee.

2. OVERVIEW OF HESA

2.1. HESA collects a range of data every year UK-wide from universities, higher education colleges and other specialist providers of higher education (“higher education providers”). Higher education providers have a statutory requirement to report data to the higher education funding bodies. This year we are collecting data from approximately 265 higher education providers. We work closely with higher education providers to support this data collection process and to analyse and quality check the data they submit. This data is then provided to UK governments and higher education funding bodies to support their work in regulating and funding higher education providers. We also provide data and analysis to a wide variety of other customers, including bodies with public functions, higher education providers (via our Heidi Plus analytics tool), academic and commercial researchers, students and potential students, private companies, professional bodies and the press and media.

2.2. Use of our data and analysis includes:

- Enabling strategic planning
- Informing policy making
- Advancing academic and commercial research
- Understanding social and economic trends
- Supporting students and prospective students' decision making



2.3. HESA is a charitable company which is funded by the subscriptions of the higher education providers from whom we collect data and it also provides an information service which supplies expertise, analysis and bespoke information. The income from the information service is used to supplement the subscription fees.

2.4. HESA provides a consistent, quality assured data service for the benefit of the UK-wide higher education sector. It is regarded as a global leader in relation to higher education statistics. It receives visitors from similar bodies from all round the world, who are seeking to learn from and to replicate the work that HESA does.

3. HESA'S DATA FUTURES PROGRAMME

3.1 The 2011 White Paper, 'Students at the Heart of the System', called for specific improvements to the collection of higher education data.

3.2 As part of its response to this White Paper, the sector established the Higher Education Data and Information Improvement Programme (HEDIIP). HEDIIP commissioned a report to assess the higher education data landscape. The programme management office was hosted by HESA, and the report was prepared by KPMG in consultation with the sector.

3.3 The resulting HEDIIP New Data Landscape Report recommended that HESA takes on more responsibility for data collection and data governance across the sector with a view to reducing the number of data demands that are made directly of higher education providers. HEDIIP identified a wide range of issues with the current administration and collection of data across the sector including:

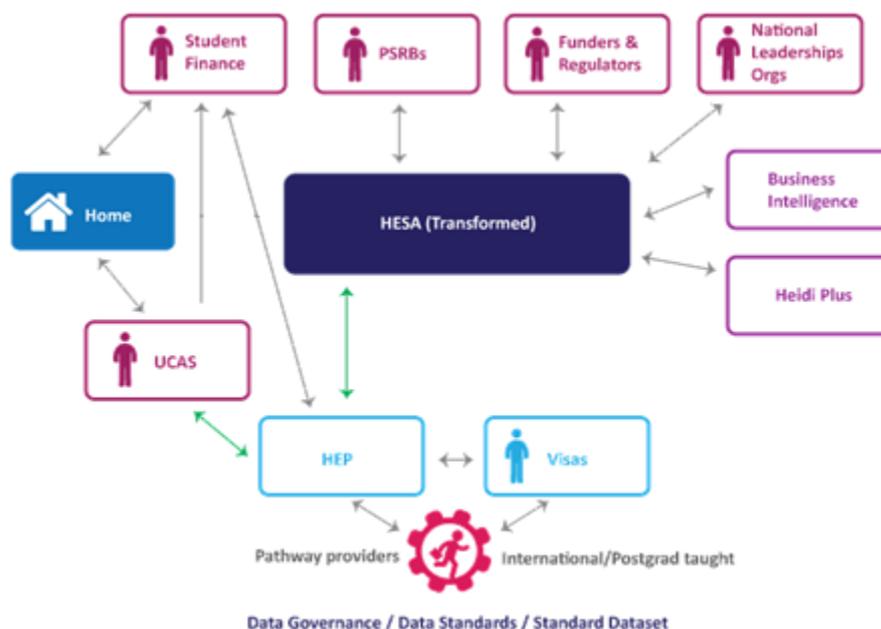
- there are 97 different data collectors and over 520 different data returns that higher education providers may be required to submit;
- there is no requirement for the data collectors to collaborate and coordinate their data needs from higher education providers;
- there is duplication in the data requested by the different data collectors, creating unnecessary burdens for higher education providers;
- the plethora of data requests has led to multiple data definitions for the same or similar data field that creates complexity for higher education providers without any real gain;
- higher education providers have varying levels of sophistication and capability in their data processes; and
- the need for certain data collections and the use of the data is not commonly understood by higher education providers.

3.4 These matters contribute to a view that the burden of data collection is greater than it should be. HEDIIP identified that principally four things influence the perception of burden:

- the physical volumes of data collected;
- the complexity and multiplicity of data definitions;
- the methods and number of organisations collecting data from higher education providers; and
- the extent to which the data collected is used.

3.5 In response to these issues HEDIIP developed a vision for a new higher education data landscape; shown in the diagram below (for more information please refer to the HEDIIP website www.hediip.ac.uk/transformed-hesa-collection).

Higher education data landscape vision



3.6 The Data Futures Programme is intended to create a modernised and more efficient approach to collecting data that is able to respond to a wide range of data users. The intended outcome is more relevant, reliable, comprehensive and timely information about higher education for the benefit of the sector, and to deliver this in more efficient ways which reduce the burden on higher education providers.

3.7 The Data Futures Programme has initiated the Collection Design Project which will consult with higher education providers, higher education funders and other higher education data collectors to determine the frequency of data to be collected by HESA, identify the data required and the purpose for which the collected data will be used. HESA is also carrying out a procurement process to select a contractor to help deliver the Data Futures Programme.

3.8 The next stage in the Data Futures Programme, following completion of the Collection Design Project and the selection of a contractor, will be the Detailed Design Phase. During this Phase the Data Futures Programme will develop the business processes and controls and define in detail how the collection will operate and the governance process concerning access, update, use and deletion of personal student data.

3.9 In summary the Data Futures Programme is being implemented to bring significant benefits to the higher education sector including for students and prospective students.

4. PRACTICAL EXAMPLES OF THE IMPACT OF THE BILL ON HE INFORMATION SHARING

4.1. At the request of DfE HESA put together a table setting out HESA's understanding of some of the high level practical consequences of the Bill as drafted. The table has been shared with DfE, and HESA has discussed its content with DfE. The table does not contain all HESA's concerns for the designated body, and concentrates on the most significant. We attach at Annex A copy for the Committee's Information.

5. SUGGESTED AMENDMENTS TO THE BILL

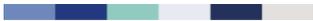
- 5.1 To assist DfE in fully understanding our concerns outlined in Annex A and to assist with how they could be addressed we also provided some initial thoughts on how the Bill could be amended and work better for the higher education sector. We attach at Annex B a copy of this for the Committee's information.
- 5.2 These suggested amendments have also been shared with DfE. As explained above, HESA has been working constructively with DfE to seek to address HESA's concerns. We understand that draft Government amendments are currently being prepared, but we do not know to what extent these will address our concerns, and how far they will reflect the proposals set out at Annex B.
- 5.3 For further information on any of these points, or in relation to HESA's input into the review more broadly, please contact Paul Clark, Chief Executive: paul.clark@hesa.ac.uk.

ANNEX A
HESA SUBMISSION ON THE HIGHER EDUCATION & RESEARCH BILL

Section Reference	Risk	Commentary on Risk	Practical Examples of possible risks
General Comment	We are concerned that the Bill as drafted is very specific in places in respect of the functions and powers of the designated body (which will be HESA or a successor body) but does not make clear that this is without prejudice to the designated body's powers as a legal person to do other things	<p>We consider that the Bill as drafted could restrict HESA's ability to lawfully process English higher education data and consequently if selected to be the designated body could prevent HESA from taking a central role in the English higher education Data Landscape; thereby preventing information being collected once and used many times.</p> <p>In reaching this conclusion HESA is taking into account how this legislation interacts with the other legislative requirements on HESA e.g. the Data Protection Act 1998 and the new EU Regulation.</p>	<ul style="list-style-type: none"> • Loss of HESA as an information hub at the centre of the UK higher education data landscape
Section 8 (1)(b)	Section 8(1)b data can't lawfully flow to HESA	<p>We consider that the Bill as drafted could be interpreted as creating a code for the flow of information. The absence of a provision in Section 8(1)(b) enabling a flow of information to the designated body is a risk to the designated body and to OfS as it places any flow of data to the designated body under this provision at risk of successful challenge on the basis of vires and/ or on the basis of the Data Protection Act 1998.</p> <p>Should OfS use its powers for purposes wider than conferred it is at risk of successful challenge for acting ultra vires. In addition, the provision of data to the designated body for sharing for the designated body's own purposes would also</p>	<p>We have set out below a few examples of data types currently collected for a range of purposes but not published. This is only a very small snapshot of what would not be able to be collected and is the tip of the iceberg:</p> <ul style="list-style-type: none"> • Awarding bodies • Student Support Eligibility • Details of teacher training provision • Parental Education

		<p>place the designated body at risk of successful legal challenge for acting ultra vires.</p> <p>This differs from the current regime where there is a specific statutory provision which allows the higher education funding bodies to share services and which relies on a combination of grounds for processing data including power to use shared services, the Funding Memorandums, and Contractual Agreements.</p> <p>In addition, for any Personal Data within this information flow the Data Protection Act 1998 would apply. The second data protection principle provides for data to be collected for one or more purposes and not to be used for incompatible purposes – so as drafted data collected by OfS under Section 8(1)(b) could be used for OfS purposes, but it would arguably be a breach of the second data protection principle for it to be used by the designated body for its purposes i.e. sharing with third parties because this is different from the purpose for which the data is collected by OfS.</p>	<ul style="list-style-type: none"> • Financial Support • FE delivered in higher education providers • Data Bridging Courses • Reasons for ending study • Franchising and collaborative provision • Regulatory bodies • Exchange programmes
Section 8 (1)(c)	Section 8(1)(c) data - the designated body is only permitted to collect data for carrying out its publication duty under Section 59(1).	<p>Currently HESA only publishes approximately one third of the data we collect on students and staff in higher education. This is due to the fact that much of the data is unsuitable for publication in raw form (e.g. Personal Data) or is collected for specific technical purposes such as for funding and regulatory purposes and for specific statutory organisations.</p> <p>The Bill as drafted lacks a clear legal basis for the designated body to be able to continue to share for purposes</p>	<p>Possible outcomes include the following:</p> <ul style="list-style-type: none"> • No English higher education data will be able to be included in online management information services delivered to higher education providers by HESA to support a range of

		<p>other than publication and also restricts what the designated body can collect.</p> <p>What would happen if a body with public functions decides that it no longer wishes to collect data direct from English higher education providers and wishes to use HESA Data instead? As drafted the designated body arguably would be prevented from sharing the data it has collected under the powers granted under the Bill because it is only authorised to publish data. In addition, the designated body may only hold a sub set of the data currently collected because arguably it will not have the ability to collect the other English higher education data on behalf of OfS.</p> <p>Please note that in addition we are concerned that the arrangements in place for information required by UKRI may not be sufficient. We consider that there is a risk for OfS, UKRI and the designated body that there will not be a lawful mechanism for the designated body to collect data required by UKRI for its functions which are not required for publication.</p> <p>In addition, there is a risk that OfS will not have the power to collect the data that UKRI needs since OfS only has the power to collect information for its own functions and not UKRIs. If what is being relied upon is that information sharing under section 103 is itself a function of OfS, in determining what OfS has the power to collect itself, we consider that this is a weak legal basis for OfS to collect data. It results in unnecessary risk of successful legal</p>	<p>compliance and planning activities, e.g. benchmarking.</p> <ul style="list-style-type: none"> • No power to share English higher education data with other higher education funding bodies and devolved governments. • No power to share English higher education data with higher education providers and other bodies with public functions or for academic or commercial research. • Loss of commercial income resulting in no ability to subsidise the costs of the collection of English higher education data using commercial income. • No power to share data to meet the needs of journalists. • This is likely to result in a significant increase in FOI requests direct to higher education providers and a loss of authoritative, comprehensive and comparable data.
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		<p>challenge on the grounds of data protection and in respect of vires/statutory powers.</p> <p>In addition, there is no power to enable OfS and UKRI to use the designated body as an information hub for such sharing as is currently the case for the Research Councils.</p> <p>We understand that reliance may be placed on UKRI's own power to collect information directly from those to whom it provides financial support, under section 86(3)(c).</p> <p>Currently, HESA operates as a shared service operated for the benefit of the funding bodies and the higher education providers. The funding bodies have express statutory powers to operate a shared service. If UKRI wished to use the designated body as a shared service, would it have the power to do so? Likewise, if UKRI wished to use the designated body to collect information on its behalf under section 86(3)(c), would it have the power to do so?</p> <p>Unless these issues are resolved, we are concerned that wide scale use of section 86(3)(c), e.g. for a new research data collection, would be a departure from the direction of travel under the Data Futures Programme. Under the Programme, HESA is to act as an information hub for the higher education sector, with information being collected once and used many times.</p>	<ul style="list-style-type: none"> No power for UKRI to be able to request the designated body to collect information that it needs for its functions (that are not aligned with those of the OfS).
S 59	Loss of ability to determine what HESA publishes	Currently HESA consults on what it publishes but ultimately the decision as to what it publishes rests with HESA. HESA retains the confidence of the sector in determining what is	Possible outcomes include the following"

		<p>published and is regarded as “authoritative and impartial” source of UK wide data. The Bill as drafted would change the designated body’s role.</p> <p>We consider it essential that it remains the designated body’s decision re content, timing and manner of what it publishes. The designated body is then able to make its own risk and privacy impact assessment. This is important when the designated body is an independent organisation such as a registered company and charity.</p> <p>In addition, HESA is a provider of Official & National Statistics which requires providers to be independent and impartial. If HESA is itself not determining the contents of its publications, we consider that its ability to comply with its statutory requirements under the Official Statistics Code of Practice could be placed in jeopardy.</p> <p>The principles of the Official Statistics Code of Practice underpin the need for any Official Statistics Producer to be managing the process of engaging/consulting with users and identifying their requirements, and then designing content of publications to meet those needs whilst remaining impartial and objective. See below:</p> <p><i>Principle 1: Meeting user needs</i> <i>The production, management and dissemination of official statistics should meet the requirements of informed decision-making by government, public services, business, researchers and the public.</i></p>	<ul style="list-style-type: none"> • Loss of regard for HESA data as impartial and authoritative. • Risk of HESA being in breach of the Official Statistics Code of Practice • Loss of status as National Statistics Provider
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		<p>Principle 2: Impartiality and objectivity <i>Official statistics, and information about statistical processes, should be managed impartially and objectively.</i></p> <p>Principle 3: Integrity <i>At all stages in the production, management and dissemination of official statistics, the public interest should prevail over organisational, political or personal interests.</i></p> <p><i>Ensure that the relevant statistical Head of Profession has the sole responsibility for deciding on statistical methods, standards and procedures, and on the content and timing of statistical releases.</i></p> <p>Protocol 1: User engagement <i>Effective user engagement is fundamental both to trust in statistics and securing maximum public value. This Protocol draws together the relevant practices set out elsewhere in the Code and expands on the requirements in relation to consultation.</i></p> <p><i>Consult users before making changes that affect statistics (for example, to coverage, definitions, or methods) or publications.</i></p> <p>In summary we consider that the role of another body (OfS) which is not an Official Statistics producer in controlling what the designated body publishes would run counter to the principles of Official Statistics and therefore risks the designated body's ability to comply with its statutory responsibilities in this regard.</p>	
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S 59	Loss of power to use data collected for publication for any other purpose	<p>Currently HESA is not referred to in any statute and is a shared service for both the higher education funding bodies and higher education providers. HESA therefore relies on the powers that any individual would have in how it determines whether or not to process Personal Data.</p> <p>The Bill as drafted gives the designated body a specific function and powers but does not specifically make clear that it retains the powers that an individual would otherwise have to process data.</p>	<ul style="list-style-type: none"> • In the event that HESA processes Personal Data collected for a purpose other than publication HESA is at risk of being subject to a successful legal challenge and penalty for processing data unlawfully.
S 61	The charging regime set out is too restrictive and places HESA's Trustees at risk of being in breach of their duties under the Charities Act 2011 and complying with Charity Commission Guidance and Charity Statement of Recommended Practice 2015	<p>Subscriptions from English higher education providers make up over 75% of HESA Subscription Income which is the majority of HESA income.</p> <p>No provision is made for the designated body to be able to build up reserves. Reserves would not fall within the definition of costs.</p> <p>No flexibility has been built in to allow for costs which may be incurred i.e. contingent liabilities. Therefore, restricting the ability of the designated body to charge for contingent liabilities.</p> <p>HESA Subscription rates are based on financial forecasts (near and longer term) Section 59(3) takes no account of this and could therefore place the designated body in financial difficulties if it is unable to build reserves. Such a provision may also result in significant fluctuations in subscription rates on a year by year basis thereby impacting on the designated body's relationship with the sector. The 12 month rolling</p>	<ul style="list-style-type: none"> • As drafted this provision could place HESA in financial difficulties as these provisions would affect over 75% of its subscription income • May result in significant fluctuations in Subscription Rates between years. • May place HESA's Board in breach of their statutory duties

		<p>restriction makes this provision even more restrictive and unworkable.</p> <p>There is no express statement that this is without prejudice to the designated body's ability to make other charges. In the new data landscape it is anticipated that HESA will collect data for other bodies with public functions. If another body with a public function asked HESA to collect data fields for it from English higher education providers would HESA be expected to charge English higher education providers separately for the data they require providers to submit to HESA i.e. a charge for OFS and separate charges for any other body with a public function.</p>	
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ANNEX B

DRAFT AMENDMENTS

8

Mandatory ongoing registration conditions for all providers

(1)

The OfS must ensure that the ongoing registration conditions of each registered higher education provider include

(a)

a condition that requires the governing body of the provider to notify the OfS of any change of which it becomes aware which affects the accuracy of the information contained in the provider's entry in the register,

(b)

a condition that requires the governing body of the provider to provide the OfS or a designated body with such information for the purposes of the performance of the OfS's functions as the OfS may require it to provide, and

(c)

a condition that requires the governing body of the provider to provide a designated body with such information for the purposes of the performance of its duty under section 59(1) (duty to publish English higher education information) or the exercise of its powers under section 59(1A) as the body may require it to provide.

(2)

In subsection (1)(b) and (c), "designated body" means a body for the time being designated under Schedule 6.

59

Duty to publish English higher education information

(1)

The relevant body must publish, or arrange for the publication of, such information relating to higher education courses provided in England by registered higher education providers as the relevant body ~~the OfS~~ considers appropriate.

(1A)

The relevant body may use or arrange for the use of information (whether or not such information is provided to it pursuant to section 8(1)(b) or (c) of this Act) in any manner that individuals generally may do.

(1B) For the purpose of performing its duties under section 59(1) and exercising its functions under section 59(1A), the relevant body may receive information (including personal data as defined in the Data Protection Act 1998) from any body or person (whether or not such

Commented [Office1]: This reflects the language of section 1 of the Localism Act 2011 and is intended to continue to permit HESA to use information as it does at present, and for any other lawful purpose

information is provided pursuant to section 8(1)(b) or (c) of this Act), and may hold information (including personal data as so defined).

(1C) Nothing in section (1A) or (1B) above entitles the relevant body to process personal data (whether by disclosure or otherwise) in a manner contrary to the Data Protection Act 1998.

(2)
In this section “the relevant body” means—

- (a) the designated body (see section 60), or
- (b) if there is no such body, the OfS.

(3)
The information must be published—

- (a) at times that the relevant body ~~OfS~~ considers appropriate, and
- (b) at least once a year.

(4)
The information must be published in a form and manner that the relevant body considers appropriate.

(5)
When determining what information should be published, and when and how it should be published, ~~the the relevant body~~ ~~OfS~~ must in particular consider what would be helpful to—

- (a) students on higher education courses provided in England by registered higher education providers;
- (b) people thinking about undertaking such courses;
- (c) registered higher education providers.

(6)
The relevant body ~~OfS~~ must from time to time consult the following about the matters described in subsection (5)—

- (a) a number of registered higher education providers that, taken together, appear to the relevant body ~~OfS~~ to comprise a broad range of the different types of such providers,
- (b) a number of persons that, taken together, appear to the relevant body ~~OfS~~ to represent, or promote the interests of, a broad range of students on higher education courses provided in England by registered higher education providers,

(c)
the OfS, and

~~(e)
a number of persons that, taken together, appear to the OfS to
represent, or promote the interests of, a broad range of employers of — graduates, and~~

(d)
such other persons as the relevant body OfS considers appropriate.

(7)
In performing the duty under subsection (1), the relevant body must—

(a)
cooperate with other persons who collect information from registered higher education providers, and

(b)
have regard to the desirability of reducing the burdens on such providers relating to the collection of information.

(8)
In ~~responding to the consultation under subsection (6) carrying out its other functions under this section~~, the OfS must have regard to the desirability of reducing the burdens described in subsection (7)(b).

(9)
The functions conferred by this section do not affect any other functions of the OfS regarding information.

(10)
In this section “graduate” means a graduate of a higher education course provided in England by a registered higher education provider.

60 Designated body

(1)
In section 59 and this section, “designated body” means a body for the time being designated under Schedule 6.

(2)
In Schedule 6—

(a)
Part 1 makes provision about the designation of a body for the purposes of section 59, and

(b)
Part 2 makes provision about oversight of the designated body by the OfS.

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(3)

~~If there is a designated body, the OfS must have regard to the views of that body when making a decision under section 59 about what information should be published and when and how it should be published.~~

~~(3) [Deleted]~~

(4)

A person listed in subsection (5) may by notice require a designated body to provide the person with information which is held by the designated body for the purposes of the performance of its duty under section 59(1) or the exercise of its powers under section 59(1A)

(5)

Those persons are—

(a)
the OfS,

(b)
UKRI, and

(c)
the Secretary of State.

Commented [Office2]: There is currently no power for UKRI to request HESA to collect information

Commented [Office3]: There is currently no power for the Secretary of State to request HESA to collect information

(6)

A person may give a notice under subsection (4) only in respect of information which is required by the person for the purposes of the performance of any of the person's functions.

(7)

A notice under subsection (4) may require the information to be provided—

(a)
by a time specified in the notice, and

(b)
in a form and manner specified in the notice.

(8)

If a designated body fails to comply with a notice under subsection (4) and does not satisfy the person who gave the notice that it is unable to provide the information, that person may enforce the duty to comply with the notice in civil proceedings for an injunction.

61

Power of designated body to charge fees

(1)

A designated body may charge an annual fee to any registered higher education provider in respect of costs incurred, or reasonably expected to be incurred, by the body in the performance by the body of its duty under section 59(1) and its other functions under this Act.

(2)

The amount of a fee payable by a registered higher education provider under this section may

be calculated ~~having regard to by reference~~ to costs incurred, or reasonably expected to be incurred, by the designated body in the performance by that body of any of its duties or functions under this Act which are unconnected with the provider.

(3)

In determining the amount of the fee payable by a registered higher education provider, the designated body may have regard to the desirability of enabling it to build up a reasonable financial reserve to provide against future contingencies.

~~(3)~~

~~The total fees payable under this section in any period of 12 months must not exceed the total costs incurred by the body in that period in the performance by the body of its functions under this Act.~~

(4)

The designated body must publish—

(a)

a statement of the amount of the fees which it charges under this section and the basis on which they are calculated, and

(b)

revised statements where the amount of the fees or the basis on which they are calculated changes.

(5)

This section is without prejudice to any power of the designated body to charge that would exist but for the provisions of this Act.

“Designated body” has the same meaning as in section 60.

SCHEDULE 6

English higher education information: designated body

5

Part 1

Designation

Recommendation

1

(1)

The OfS may recommend to the Secretary of State that a body is designated for the purposes of section 59.

(2)

The OfS may recommend a body only if it considers that the body is suitable to be designated under this Schedule.

Consultation prior to recommendation

2

(1)

Before recommending the designation of a body under this Schedule, the OfS must consult in accordance with sub-paragraph (3) about whether there is a body that is suitable to be designated under this Schedule.

(1A)

Before determining that it will not consider recommending the designation of a body under this Schedule but will instead itself perform the duties and functions of the designated body as provided in section 59(2)(b) above, the OfS must consult in accordance with sub-paragraph (3) about whether the OfS should take this course.

(2)

The Secretary of State may direct the OfS to consult in accordance with sub-paragraph (3) about whether there is a body that is suitable to be designated under this Schedule.

(3)

The OfS consults in accordance with this sub-paragraph if it consults—

(a)

a number of registered higher education providers that, taken together, appear to the OfS to comprise a broad range of the different types of such providers,

(b)

a number of persons that, taken together, appear to the OfS to represent, or promote the interests of, a broad range of students on higher education courses provided in England by registered higher education providers,

~~(c)~~

~~a number of persons that, taken together, appear to the OfS to represent, or promote the interests of, a broad range of employers of graduates, and~~

(c)

such other persons as the OfS considers appropriate.

(4)

If the OfS consults in accordance with this paragraph, it must—

(a)

in a case falling within sub-paragraph (1) above, decide whether to recommend the designation of a body under this Schedule,

(aa) in a case falling within sub paragraph (1A) above, decide whether or not to consider recommending the designation of a body under this Schedule, and

(b)

in either case, notify the Secretary of State of its decision.

(5)

The OfS must publish its decision under sub-paragraph (4).

Designation

3

(1)

This paragraph applies where, in accordance with paragraphs 1 and 2, the OfS recommends

the designation of a body (“the recommended body”) under this Schedule.

(2)

The Secretary of State may designate the recommended body only if the Secretary of State considers that the body is suitable to be designated under this Schedule.

(3)

If the Secretary of State decides to designate the recommended body, the

Secretary of State must—

(a)

notify the body of the designation before the date on which the designation takes effect (“the effective date”), and

(b)

publish notice of the designation before that date.

(4)

The notice of the designation must state—

(a)

the name of the body, and

(b)

the effective date.

(5)

If the Secretary of State decides not to designate the recommended body, the Secretary of State must publish the reasons for not doing so.

Bodies suitable to be designated under this Schedule

4

(1)

A body is suitable to be designated under this Schedule if the body satisfies conditions A to D.

(2)

Condition A is that the body is capable of performing the duty of the relevant body under section 59(1) in an effective manner.

(3)

Condition B is that—

(a)

the persons who determine the strategic priorities of the body represent a broad range of registered higher education providers,

(b)

the body commands the confidence of registered higher education providers, and

(c)

the body exercises its functions independent of any particular higher education provider.

(4)

Condition C is that the body consents to being designated under this Schedule.

(5)

Condition D is that the body is a body corporate and is not—

(a)

a servant or agent of the Crown, or

(b)

a body to which the Secretary of State appoints members.

Removal of designation

(1)

The Secretary of State may by notice remove a designation under this Schedule.

(2)

The notice must—

(a)

include reasons for the Secretary of State's decision, and

(b)

specify the date on which the designation is removed.

(3)

The Secretary of State may only remove the designation if—

(a)

the Secretary of State is satisfied that removing the designation would be appropriate, or

(b)

the designated body consents to the removal of the designation.

(4)

Before removing the designation the Secretary of State must consult—

(a)

the OfS,

(b)

a number of registered higher education providers that, taken together, appear to the

Secretary of State to comprise a broad range of the different types of such providers,

(c)

a number of persons that, taken together, appear to the Secretary of

State to represent, or promote the interests of, a broad range of students on higher

education courses provided in England by registered higher education providers,

~~(d)~~

~~a number of persons that, taken together, appear to the Secretary of State to represent, or promote the interests of, a broad range of employers of graduates, and~~

(e)

such other persons as the Secretary of State considers appropriate.

(5)

In determining whether a designation under this Schedule should be removed, the Secretary of State must have regard to any relevant information that the OfS has provided to the Secretary of State.

(6)

The Secretary of State must publish a notice under this paragraph.

Part 2

Oversight by the OfS

Application

6

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

Oversight arrangements

7

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

Annual report by the designated body

8

(1)
As soon as possible after the end of each annual reporting period, the designated body must prepare and send to the OfS a report about the performance of its duty under section 59(1) during the period.

(2)
“Annual reporting period”, in relation to a designated body, means—

- (a) the period of 12 months beginning with the effective date, and
- (b) each successive period of 12 months.

Triennial report by the OfS

9

(1)
As soon as possible after the end of each triennial reporting period, the OfS must prepare and send to the Secretary of State a triennial report about—

(a) how the designated body has performed its duty under section 59(1) during the period,

(b) whether the designated body should continue to be designated under Part 1 of this Schedule,

(c) the appropriateness of any fees charged by the designated body under section 61, and

(d)
any other matters that the OfS considers relevant.

(2)
In preparing a triennial report, the OfS must have regard to any views provided to the OfS by a person listed in sub-paragraph (3) about—
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(a)
the matters listed in sub-paragraph (1)(a) to (c), and
(b)
what other matters, if any, should be dealt with in the report.

(3)
Those persons are—

(a)
registered higher education providers,
(b)
persons representing, or promoting the interests of, students on higher education courses provided in England by registered higher education providers,
(c)
persons representing, or promoting the interests of, employers of graduates, and
(d)
such other persons as the OfS considers appropriate.

(4)
“Triennial reporting period”, in relation to a designated body, means—

(a)
the period of 3 years beginning with the effective date, and
(b)
each successive period of 3 years.

Duty of the OfS to inform the Secretary of State about significant concerns

10

The OfS must inform the Secretary of State if it has significant concerns about—

(a)
how the designated body is performing its duty under section 59(1) or
(b)
the continued suitability of the designated body to be designated under this Schedule.

Part 3
Interpretation

11

(1)

In this Schedule—

“designated body” means a body for the time being designated under this Schedule;

“the effective date”, in relation to a designated body, has the meaning given in paragraph 3;

“graduate” has the same meaning as in section 59.

(2)

References in this Schedule to a body that is suitable to be designated under this Schedule are to be read in accordance with paragraph 4.