



## EXPLANATORY NOTES

---

### Higher Education and Research Act 2017

#### Chapter 29

£11.00



# HIGHER EDUCATION AND RESEARCH ACT 2017

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Higher Education and Research Act 2017 (c. 29) which received Royal Assent on 27 April 2017.

- These Explanatory Notes have been produced by the Department for Education and Department for Business, Energy and Industrial Strategy in order to assist the reader of the Act and to help inform debate on it. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act. So where a provision of the Act does not seem to require any explanation or comment, the Notes simply say in relation to it that the provision is self-explanatory.

## Table of Contents

Subject	Page of these Notes
<b>Overview of the Act</b>	<b>7</b>
<b>Policy background</b>	<b>7</b>
Part 1: The Office for Students	8
Establishment of the Office for Students	8
Powers to grant degrees or convey “university” status	9
Information and choice for students	9
Access and participation	10
Part 2: Other education measures	10
Financial support for students	10
Deregulation of higher education corporations	10
Part 3: Research	11
<b>Legal background</b>	<b>12</b>
Part 1: The Office for Students	12
Part 2: Other education measures	12
Part 3: Research	12
Science and Technology Act 1965	12
Higher Education Act 2004	13
Further and Higher Education Act 1992	13
<b>Territorial extent and application</b>	<b>13</b>
<b>Commentary on provisions of Act</b>	<b>14</b>
Part 1: The Office for Students	14
Establishment of the Office for Students	14
Section 1: The Office for Students	14
Section 2: General duties	14
The register of English higher education providers	15
Section 3: The register	15
Section 4: Registration procedure	15
Registration conditions	15
Section 5: The initial and general ongoing registration conditions	15
Section 6: The specific ongoing registration conditions	15
Section 7: Proportionate conditions	15
Mandatory registration conditions	16
Section 8: Mandatory ongoing registration conditions for all providers	16
Section 9: Mandatory transparency condition for certain providers	16
Section 10: Mandatory fee limit condition for certain providers	16
Section 11: Duty to publish a list regarding the fee limit condition	16

*These Explanatory Notes relate to the Higher Education and Research Act 2017 (c. 29) which received Royal Assent on 27 April 2017*

Section 12: Mandatory access and participation plan condition for certain institutions	17
Other registration conditions	17
Section 13: Other initial and ongoing registration conditions	17
Section 14: Public interest governance condition	17
Enforcement of ongoing registration conditions	18
Section 15: Power to impose monetary penalties	18
Section 16: Suspension of registration	18
Section 17: Suspension: procedure	18
Section 18: De-registration by the OfS	18
Section 19: De-registration by the OfS: procedure	18
Section 20: De-registration: appeals	19
Section 21: Refusal to renew an access and participation plan	19
Voluntary de-registration	19
Section 22: Voluntary de-registration	19
Quality and standards	19
Section 23: Assessing the quality of, and the standards applied to, higher education	19
Section 24: Quality Assessment Committee	20
Section 25: Rating the quality of, and the standards applied to, higher education	20
Section 26: Report on operation of section 25 schemes	20
Section 27: Performance of assessment functions by a designated body	21
Section 28: Power of designated body to charge fees	21
Access and participation	21
Section 29: Power to approve an access and participation plan	21
Section 30: Duration of a plan	21
Section 31: Content of a plan: fees	22
Section 32: Content of a plan: equality of opportunity	22
Section 33: Variation of a plan	22
Section 34: Review of decisions on approval or variation	22
Section 35: Advice on good practice	22
Section 36: Duty to protect academic freedom	22
Section 37: Power of Secretary of State to require a report	23
Student transfers	23
Section 38: Duty to monitor etc the provision of arrangements for student transfers	23
Powers to give financial support	23
Section 39: Financial support for registered higher education providers	23
Section 40: Financial support for certain institutions	23
Section 41: Financial support: terms and conditions	24
Powers to grant degrees etc	24
Section 42: Authorisation to grant degrees etc	24
Section 43: Supplementary powers with authorisation	24
Sections 44 and 45: Variation or revocation of section 42 authorisation and other authorisations to grant degrees etc	24
Section 46: Grant, variation or revocation of authorisation: advice on quality etc	25
Section 47: Grant of authorisation: notification of new providers	25
Section 48: Variation or revocation of authorisation: procedure	25
Section 49: Appeals against variation or revocation of authorisation	25
Section 50: Validation by authorised providers	25
Section 51: Validation by the OfS	26
Section 52: Sections 42 to 49: consequential amendments	26
Sections 53 and 54: Unrecognised degrees	26
Section 55: Saving for right to grant degrees under the Ecclesiastical Licences Act 1533	26
Powers in relation to “university” title	26
Section 56: Use of “university” in title of institution	26

*These Explanatory Notes relate to the Higher Education and Research Act 2017 (c. 29) which received Royal Assent on 27 April 2017*

Section 57: Unauthorised use of “university” in title of institution etc	27
Section 58: Revocation of authorisation to use “university” title	27
Section 59: Revocation of authorisation: procedure	27
Section 60: Appeals against revocation of authorisation	28
Powers of entry and search	28
Section 61: Entering and searching premises with a warrant	28
Information powers	28
Section 62: Power to require information from unregistered providers	28
Section 63: Cooperation and information sharing by OfS	29
Information duties	29
Section 64: Duty to compile and make available higher education information	29
Section 65: Duty to publish English higher education information	29
Section 66: Designated body	29
Section 67: Power of designated body to charge fees	30
Financial sustainability	30
Section 68: Duty to monitor and report on financial sustainability	30
Efficiency studies etc	30
Section 69: Studies for improving economy, efficiency and effectiveness	30
Funding of the OfS	30
Section 70: Registration fees	30
Section 71: Other fees	31
Section 72: Retention of fee related income	31
Section 73: Costs recovery	31
Section 74: Grants from the Secretary of State	31
Regulatory framework	31
Section 75: Regulatory framework	31
Supplementary functions	32
Section 76: Secretary of State’s power to confer supplementary functions	32
Directions	32
Section 77: Secretary of State’s power to give directions	32
Powers of Secretary of State to obtain information or advice	32
Section 78: Power to require information and advice from the OfS	32
Section 79: Power to require application-to-acceptance data	33
Section 80: Use of application-to-acceptance data for research purposes	33
HEFCE and the DFA	33
Section 81: Higher Education Funding Council for England	33
Section 82: The Director of Fair Access to Higher Education	33
Interpretation	33
Section 83: Meaning of “English higher education provider” etc	33
Section 84: Designation of other providers of higher education	34
Section 85: Other definitions	34
<b>Part 2: Other Education Measures</b>	<b>34</b>
Financial support for students	34
Section 86: Power to make alternative payments	34
Section 87: Consequential amendments	34
Section 88: Other amendments relating to financial support	35
Student complaints scheme	35
Section 89: Qualifying institutions for purposes of student complaints scheme	35
Deregulation of higher education corporations	36
Section 90: Higher education corporations in England	36

*These Explanatory Notes relate to the Higher Education and Research Act 2017 (c. 29) which received Royal Assent on 27 April 2017*

<b>Part 3: Research</b>	<b>36</b>
Establishment of United Kingdom Research and Innovation	36
Section 91: United Kingdom Research and Innovation	36
Section 92: The Councils of UKRI	36
Research and innovation functions and role of the Councils	37
Section 93: UK research and innovation functions	37
Section 94: Financial support: supplementary provision	37
Section 95: Exercise of functions by science and humanities Councils	37
Section 96: Exercise of functions by Innovate UK	38
Section 97: Exercise of functions by Research England	38
Section 98: Exercise of functions by the Councils: supplementary	38
Strategies and strategic delivery plans	39
Section 99: UKRI's research and innovation strategy	39
Section 100: Councils' strategic delivery plans	39
Funding and directions	39
Section 101: Grants to UKRI from the Secretary of State	39
Section 102: Secretary of State's power to give directions to UKRI	40
Section 103: Haldane principle, balanced funding and advice from UKRI	40
General functions	40
Section 104: General duties	40
Section 105: Power to require information and advice from UKRI	41
Section 106: Studies for improving economy, efficiency and effectiveness	41
Section 107: Provision of research services	41
Section 108: Representing the United Kingdom	41
Supplementary	41
Section 109: Predecessor bodies and preservation of symbolic property	41
Section 110: Amendments to powers to support research	41
Interpretation	42
Section 111: Definitions	42
<b>Part 4: General</b>	<b>42</b>
Section 112: Cooperation and information sharing between OfS and UKRI	42
Section 113: Joint working	42
Section 114: Advice to Northern Ireland departments	42
Section 115: Transfer schemes	42
Section 116: Power to make consequential provision etc	42
Section 117: Transitional, transitory or saving provision	43
Section 118: Pre-commencement consultation	43
Section 119: Regulations	43
Section 120: Directions	43
Section 121: General interpretation	43
Section 122: Minor and consequential amendments	43
Section 123: Extent	43
Section 124: Commencement	44
Section 125: Short title	44
<b>Schedules</b>	<b>44</b>
Schedule 1: The Office for Students	44
Schedule 2: The fee limit	46
Schedule 3: Monetary penalties: procedure, appeals and recovery	48
Schedule 4: Assessing higher education: designated body	48
Schedule 5: Powers of entry and search etc	49
Schedule 6: English higher education information: designated body	49
Schedule 7: Costs recovery: procedure, appeals and recovery	50

*These Explanatory Notes relate to the Higher Education and Research Act 2017 (c. 29) which received Royal Assent on 27 April 2017*

Schedule 8: Higher Education Corporations in England	50
Schedule 9: United Kingdom Research and Innovation	52
Schedule 10: Transfer schemes	55
Schedule 11: Minor and consequential amendments relating to Part 1	55
Schedule 12: Minor and consequential amendments relating to Part 3	55
<b>Commencement</b>	<b>56</b>
<b>Related documents</b>	<b>56</b>
<b>Annex A - Territorial extent and application</b>	<b>57</b>
<b>Annex B - Hansard References</b>	<b>58</b>
<b>Annex C - Progress of Act Table</b>	<b>60</b>



# Overview of the Act

- 1 This Act includes a range of measures which:
  - create a new regulatory body overseeing the English higher education sector, the Office for Students (OfS). The OfS has explicit duties focused on choice, quality and value for money, and in performing its functions, the OfS must also have regard to the need to protect the institutional autonomy of English higher education providers;
  - place a duty on the OfS to focus on equality of opportunity in connection with access to and participation in higher education;
  - seek to bring greater transparency to the data held by the higher education sector;
  - put in place risk-based regulation with the aim that the higher education sector serves its stakeholders: students, employers and taxpayers;
  - seek to facilitate new high-quality providers to start up and achieve degree awarding powers, and subsequently secure university title;
  - give the OfS the power to operate a Teaching Excellence Framework to recognise and reward high-quality teaching;
  - create a single research and innovation funding body, United Kingdom Research and Innovation (UKRI), enshrining the Haldane principle and protections for the dual support system of research funding.

## Policy background

- 2 The policy underlying many of the provisions in this Act was consulted on in the Green Paper [“Higher education: teaching excellence, social mobility and student choice”](#), published in November 2015. The Government’s response to the consultation was published as a White Paper, [“Success as a Knowledge Economy: Teaching Excellence, Social Mobility and Student Choice”](#) on 16 May 2016.
- 3 The [Conservative Manifesto](#) of 2015 stated:
  - a. we will ensure that universities deliver the best possible value for money to students: we will introduce a framework to recognise universities offering the highest teaching quality; encourage universities to offer more two-year courses and degree apprenticeships and require more data to be openly available to potential students so that they can make decisions informed by the career paths of past graduates;
  - b. through Paul Nurse's independent review of research councils, we will seek to ensure that the United Kingdom continues to support world-leading science, and invests public money in the best possible way;
  - c. we will ensure the continuing success and stability of our higher education reforms, so that the interests of both students and taxpayers are fairly represented.

- 4 In the policy paper [“Fixing the foundations: creating a more prosperous nation”](#) published in July 2015 the Government committed that:
  - a. it would introduce a new Teaching Excellence Framework to sharpen incentives for institutions to provide excellent teaching, as currently exist for research;
  - b. it would work to enable the best new providers to compete on a level playing field with established universities. As part of the review of validation arrangements, the Government would explore options to allow the best providers to offer degrees independently of existing institutions before they obtain degree awarding powers;
  - c. providers with good quality teaching would be able to raise their fees by the rate of inflation from 2017/18.
- 5 At the [Spending Review and autumn statement](#) in November 2015 the Government stated:
  - a. that it was taking forward the recommendations of the Nurse Review and, subject to legislation, would introduce a new body - Research UK - which would work across the seven research councils;
  - b. that it would also look to integrate Innovate UK into Research UK in order to strengthen collaboration between the research base and the commercialisation of discoveries in the business community. Innovate UK would retain its clear business focus and separate funding stream.
- 6 This Act enables the Government to meet these commitments.

## Part 1: The Office for Students

### Establishment of the Office for Students

- 7 The Higher Education Funding Council for England (HEFCE), was set up as a Government funding body in the Further and Higher Education Act 1992. At the time it was designed, university competition was limited, student numbers were controlled, and the majority of university teaching was funded by public grant. Reports by the Higher Education Commission in 2013 and Universities UK in 2015 (the Gaskell Report) suggested that with the introduction of student tuition fees and a diminished reliance on public grant funding, HEFCE’s role, purpose and powers had become outdated.
- 8 The Higher Education Act 2004 created a new office-holder, the Director of Fair Access to Higher Education, whose role was to approve and monitor plans made by institutions in England that wish to set fees higher than the basic amount. His or her office was informally known as the Office for Fair Access (or OFFA).
- 9 This Act creates a new non-departmental public body, the Office for Students (OfS), as the main regulatory body, operating at arm’s length from Government, and with statutory powers to regulate providers of higher education in England. In performing its functions, the OfS must have regard to the need to protect the institutional autonomy of English higher education providers. It must also consider quality, greater choice and opportunities for students, competition, value for money in the provision of higher education and the need to promote equality of opportunity in access to and participation in higher education. These duties will ensure the OfS will focus on fostering a more competitive system with the aim of driving up quality and outcomes for students and taxpayers, while maintaining protections for academic freedom and institutional autonomy.

- 10 This Act abolishes HEFCE and the office of Director of Fair Access to Higher Education, and transfers with appropriate modifications the regulatory functions of the HEFCE and the statutory powers of the Director of Fair Access to Higher Education to the OfS.
- 11 To regulate the sector and provide assurance for students, this Act requires the OfS to establish and maintain a register of higher education providers in England. The register will include, among others, all providers whose students can receive student support.
- 12 Other providers offering accredited higher education courses can apply to join the register on a voluntary basis in return for compliance with the student complaints scheme of the Office of the Independent Adjudicator for Higher Education (OIA) but will not receive access to OfS funding and/or student support.

## **Powers to grant degrees or convey “university” status**

- 13 This Act introduces a range of reforms to the way in which providers obtain authorisations to grant taught awards or research awards. In these Explanatory Notes, these authorisations are referred to as “degree awarding powers”.
- 14 The provisions enable providers to make a case for obtaining degree awarding powers from the OfS. They enable eligible providers to secure degree awarding powers in a number of different ways and at different levels. The provisions do not require a track record evidenced by validation (or other arrangements) before degree awarding powers can be granted, and enable degree awarding powers to be granted on a time-limited or indefinite basis. The OfS also has the power to make any granting of degree awarding powers subject to extensive monitoring and to impose appropriate restrictions on scope. The provisions also enable more flexible degree awarding powers: i.e. up to bachelor-level only or in a limited range of subjects. For the first time, a role for an advisory body on degree awarding powers is enshrined in statute. The provisions also make changes to the process for conveying degree awarding powers and university status by transferring responsibility for granting them from the Privy Council to the OfS.
- 15 This Act contains express powers to vary and revoke degree awarding powers and to revoke university title. Any variation or revocation must follow the procedures set out in this Act. Revocations must be on one of the grounds specified in this Act. Providers can appeal against a variation or revocation to the First-tier Tribunal.

## **Information and choice for students**

- 16 This Act makes provision for a quality rating scheme. This will be delivered through the Teaching Excellence Framework (TEF), as promised in the [Conservative Manifesto](#) of 2015, to provide clear information to students about where the best higher education provision can be found with the intention of driving up the standard of teaching in all universities. The TEF is intended to provide clear, understandable information to students about where teaching quality is outstanding and to establish a robust framework for gathering information to measure teaching in its broadest sense.
- 17 This Act requires the Secretary of State, within one year of the commencement of section 25, to commission an independent review of the operation of the TEF. This Act also allows fee caps to be set at differing levels based on a provider’s TEF award, subject to overall limits which will be prescribed by regulations scrutinised by Parliament. However, differentiated fees based on providers’ TEF awards cannot be introduced until academic year 2020/21.

- 18 This Act enables the Secretary of State to make regulations to implement a higher fee cap for accelerated courses. It also gives the OfS a power to monitor the availability of student transfer schemes provided by registered higher education providers, and a power to facilitate, encourage or promote awareness of such schemes.

## Access and participation

- 19 This Act introduces a transparency duty requiring higher education providers to publish data on the backgrounds of their applicants to make their admissions processes clearer. It also requires the OfS to consider access and success for students from disadvantaged backgrounds alongside choice and competition. It provides for a member of the OfS with responsibility for fair access and participation for students from disadvantaged backgrounds, whose role is enshrined in law.
- 20 This Act does not allow for the OfS to set targets for access and success. Instead, in a continuation of the way that the Director of Fair Access to Higher Education has operated, it will be able to work with institutions to ensure they are doing as much as they can to make real progress on these issues.
- 21 The OfS has a duty to protect academic freedom, including institutional autonomy over admissions, in the performance of its duties around access and participation.

## Part 2: Other education measures

### Financial support for students

- 22 The interest on student loans could deter some prospective students who feel unable to use interest-bearing loans for religious reasons. To address these concerns, the Government consulted on a non-interest bearing alternative model of student finance. The consultation was restricted to student finance in England.
- 23 The Government response to that consultation set out the intention to introduce primary legislation to allow for alternative student finance to be offered alongside current student loans. Payment and repayment levels for this alternative student finance would be equivalent to those set for users of student loans.
- 24 The 2015 White Paper re-affirmed the Government's intention to introduce an alternative student finance product which would be equivalent to a student loan but avoid the use of interest.
- 25 Before this Act, legislation only allowed for regulations to offer loans and grants to support students of higher and further education. This Act extends that power so that regulations can provide an alternative model of student finance alongside current student loans.

### Deregulation of higher education corporations

- 26 Higher education corporations originated in 1992 from local authority-funded higher education providers. Since then, additional higher education corporations have been created by further education corporations transferring into the higher education sector.
- 27 Once removed from local education authority control in 1992, the new higher education corporations had to take on responsibility for their own governance, management and staffing. As they were now entities with a new type of corporate status, it was considered necessary to set down a detailed legislative framework within which they would operate.
- 28 This Act deregulates the legislative arrangements governing higher education corporations, with the aim of placing them on a more equal footing with other providers of higher education incorporated under different constitutional arrangements.

*These Explanatory Notes relate to the Higher Education and Research Act 2017 (c. 29) which received Royal Assent on 27 April 2017*

## Part 3: Research

- 29 This Act streamlines the current research and innovation landscape by bringing together the nine existing research and innovation funders, including the seven research councils, Innovate UK and the research and knowledge exchange functions currently performed by HEFCE, whilst preserving the strengths of individual disciplines and providing legislative protection for dual support funding of research.
- 30 In December 2014 the Government published "[Our Plan for Growth: Science and Innovation](#)", a joint HM Treasury and Department for Business, Innovation and Skills strategy to support United Kingdom research and innovation. Linked to the strategy was a commission to Sir Paul Nurse, then the President of the Royal Society, to undertake a review with the research councils to: "look at how [the] councils can evolve to support research in the most effective ways by drawing on a range of evidence, including international comparisons and the views of the scientific and business communities".
- 31 The 2015 [Conservative Manifesto](#) pledged to make use of Sir Paul's findings which were published in November 2015. At the 2015 Spending Review Government reiterated its manifesto commitment to support the Nurse recommendations and indicated it would consider the inclusion of Innovate UK. A consultation on this was launched in February 2016.
- 32 These initiatives, complemented by the [November 2015 Green Paper consultation](#), form the basis of Part 3 of this Act, which is based on the following key principles:
- a. the aim of strengthening strategic thinking on cross cutting priorities and developing a more agile and responsive research and innovation funding system;
  - b. the aim of retaining the world class strengths of the current system, including the Haldane principle, the dual support system and Innovate UK's distinct business facing focus;
  - c. the importance of subsidiarity, with decisions needing to be taken at the lowest effective level and leaders in particular fields of activity given full responsibility for decisions in their areas; and
  - d. the aim of reducing bureaucracy, freeing up research and innovation leaders to focus on strategic decision-making.
- 33 This Act provides for the formation of a single executive non-departmental public body operating at arm's length from Government. As outlined in the Government's White Paper "Success as a Knowledge Economy: Teaching Excellence, Social Mobility & Student Choice", published on 16 May 2016, this new body, UKRI, brings together the seven research councils and integrate Innovate UK, while retaining Innovate UK's distinctive business focus and separate funding stream. In addition, it integrates the research and knowledge exchange functions currently performed by HEFCE, maintaining its hypothecated funding streams and protections for the dual support system - in England.
- 34 This Act provides for nine "Councils" within UKRI – seven of which will represent the Research Councils - which will have autonomy on scientific, innovation and research decision making, with delegated budgets. This Act provides for UKRI to delegate functions to the Councils, with each Council responsible for the strategic leadership and research and scientific decisions in their area. Councils are led by Executive Chairs, appointed by Ministers on the advice of UKRI's board and reporting to UKRI's CEO. The Executive Chairs will each have significant expertise in their particular fields of activity (e.g. medical research, innovation). The Executive Chair will discharge the implementation of their Council's decisions on a day-to-day basis. UKRI's board will have responsibility for leading overall strategic direction and cross-cutting decision making, including managing funds with cross-disciplinary impact.

## Legal background

- 35 The following significant legislation is referenced by this Act. Explanation on how previous legislation is referenced, if required, is given below or in the commentary on provisions in this Act.
- a. Higher Education Act 2004
  - b. Teaching and Higher Education Act 1998
  - c. Further and Higher Education Act 1992
  - d. Science and Technology Act 1965
  - e. Education Reform Act 1988
  - f. Commissioners for Revenue and Customs Act 2005
  - g. Education (Scotland) Act 1980

## Part 1: The Office for Students

- 36 The relevant legal background is explained in the policy background section of these notes.

## Part 2: Other education measures

- 37 This Act amends existing primary legislation. It amends the Teaching and Higher Education Act 1998, which prohibits unauthorised use of “university” title and which governs financial provision for higher and further education, to enable the OfS (instead of the Privy Council) to approve use of “university” title and to create a power to offer, through secondary legislation, an alternative model of student finance alongside current student loans. This Act also amends provisions of the Higher Education Act 2004 relating to the student complaints scheme, and provisions of the Education Reform Act 1988 and the Further and Higher Education Act 1992 regarding the unrecognised degree offence, authorisations to grant degrees, consent to university title and higher education corporations.

## Part 3: Research

- 38 This Act draws together nine existing bodies into a single new non-departmental public body, UKRI.
- 39 The legislation used to empower these nine bodies, to transfer funds from Parliament, via the Secretary of State, to them and to coordinate their activity with government is as follows:

### Science and Technology Act 1965

- 40 The Science and Technology Act 1965 provided a framework for the funding of scientific research including the social sciences. That Act contains other provisions, including empowering the Secretary of State to fund research through other bodies.
- 41 The following bodies were designated as research councils under the Science and Technology Act 1965:
- a. Medical Research Council
  - b. Natural Environment Research Council
  - c. Engineering and Physical Sciences Research Council
  - d. Economics and Social Research Council

- e. Biotechnology and Biological Research Council
- f. Science and Technology Facilities Research Council
- g. Innovate UK (legally: The Technology Strategy Board)

### Higher Education Act 2004

- 42 A further research council, the Arts and Humanities Research Council was formed under the Higher Education Act 2004.

### Further and Higher Education Act 1992

- 43 HEFCE was established under the Further and Higher Education Act 1992 as a funding body. It has functions in both the teaching and research spheres.

## Territorial extent and application

- 44 Section 123 sets out the territorial extent of this Act, that is the jurisdictions which this Act forms part of the law of. The extent of an Act can be different from its application. Application is about where an Act produces a practical effect, disregarding effects that are minor or consequential. The commentary on individual provisions (or groups of provisions) of this Act includes a paragraph explaining their extent.
- 45 All provisions of this Act extend to England and Wales and apply to England.
- 46 The provisions relating to student complaints also apply in part to Wales.
- 47 The provisions on the following topics also extend and apply to Wales, Scotland and Northern Ireland:
- the making of arrangements for schemes for rating the quality and standards of higher education (higher education is a devolved matter and these provisions enable the devolved administrations to consent to providers taking part in such schemes established under this Act);
  - enabling the Secretary of State to obtain application-to-acceptance data and sharing that with authorised researchers;
  - research councils (except for provisions which relate exclusively to the functions of Research England) and the establishment of UKRI;
  - co-operation and information sharing and joint working of authorities (these provisions touch on devolved matters).
- 48 Amendments to existing legislation relating to the power to make alternative payments also extend to Scotland and Northern Ireland and apply to Wales but do not apply to Scotland or Northern Ireland. Other amendments relating to financial support for students also apply to Wales (but do not extend or apply to Scotland or Northern Ireland). The power to offer student support is a devolved matter.
- 49 Some amendments to existing legislation relating to unrecognised degrees also extend to Scotland but do not apply there.
- 50 Some amendments to existing legislation relating to powers in relation to the unauthorised use of “university” title also extend to Scotland and Northern Ireland but do not apply there.

- 51 Section 83 (an interpretation provision) also applies to Wales, Scotland and Northern Ireland to the extent that it is needed to apply there for the purposes of section 25.
- 52 The general provisions in Part 4 also extend to Scotland and Northern Ireland but not all of them will apply there.
- 53 In addition, this Act makes a number of consequential amendments to existing legislation. Any amendment, repeal or revocation made by this Act has the same extent within the United Kingdom as the enactment amended, repealed or revoked (see subsection (4) of section 123, which is subject to the exceptions set out in subsections (5) and (6) of that section). Section 54(18) and paragraph 27(2) of Schedule 12 provide for certain amendments to extend or be extended to the Channel Islands, Isle of Man or British overseas territories.
- 54 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

## Commentary on provisions of Act

### Part 1: The Office for Students

#### Establishment of the Office for Students

##### Section 1: The Office for Students

- 55 This section provides for the establishment of the Office for Students, referred to in this Act and in these Explanatory Notes as “the OfS”. As a body corporate, the OfS has its own legal personality and specific powers and duties. Schedule 1 makes further provision about the OfS.
- 56 This section forms part of the law of England and Wales.

##### Section 2: General duties

- 57 Subsection (1) sets out matters to which the OfS must have regard when performing its functions. These include the need to protect the institutional autonomy of English higher education providers, the need to promote quality, and greater choice and opportunities for students in such providers’ higher education provision, the need to encourage competition between providers while having regard to the benefits of collaboration, the need to promote value for money, the need to promote equality of opportunity in connection with access and participation, the need for efficient, effective and economic use of the OfS’s own resources, and the principles of best regulatory practice where these are relevant.
- 58 Subsection (2) provides that the reference to “choice” in subsection (1) includes choice amongst a diverse range of types of higher education provider, higher education courses and means by which such courses are delivered.
- 59 Subsection (3) provides that, in performing its functions, the OfS must have regard to guidance given to it by the Secretary of State. In giving such guidance, subsection (4) provides that the Secretary of State must have regard to the need to protect the institutional autonomy of English higher education providers. Subsections (5) to (7) make further provision as to guidance given by the Secretary of State. Subsection (8) defines institutional autonomy for the purposes of Part 1 of this Act (the term is also used in sections 36, 74 and 77).
- 60 This section forms part of the law of England and Wales.



## The register of English higher education providers

### Section 3: The register

- 61 This section sets out the OfS's responsibilities with regards to the register of providers of higher education, and includes provisions in respect of applications for registration. The register is a list of all providers of English higher education providers who satisfy the conditions for registration in this section.
- 62 This section also makes provision for initial and ongoing requirements of registration that providers must meet to be on the register. This section further enables the Secretary of State to make provision by regulations about the information that the register must include for each provider. The OfS must make the information contained in the register, and information previously contained in it, publically available.
- 63 This section forms part of the law of England and Wales.

### Section 4: Registration procedure

- 64 This section makes provision for the procedure that must be adopted when the OfS registers an institution or refuses an application for registration.
- 65 This section forms part of the law of England and Wales.

## Registration conditions

### Section 5: The initial and general ongoing registration conditions

- 66 This section sets out the OfS's responsibility to determine and publish the initial and ongoing conditions. Different conditions may be determined for different types of providers and for registration in different parts of the register.
- 67 If it appears to the OfS appropriate to do so, it must consult concerned bodies representing the interests of English higher education providers before setting or changing the conditions.
- 68 This section forms part of the law of England and Wales.

### Section 6: The specific ongoing registration conditions

- 69 This section gives the OfS the ability to impose, vary and remove specific ongoing registration conditions on a particular institution.
- 70 This section also makes provision for the procedure that must be adopted when the OfS imposes, varies or removes a specific ongoing registration condition.
- 71 This section forms part of the law of England and Wales.

### Section 7: Proportionate conditions

- 72 This section requires the OfS to ensure that the registration conditions are proportionate to the OfS's assessment of the risk of an institution failing to comply with regulation by the OfS. This section also requires the OfS to keep under review the registration conditions applicable to an institution.
- 73 This section forms part of the law of England and Wales.

## Mandatory registration conditions

### Section 8: Mandatory ongoing registration conditions for all providers

- 74 This section sets out the ongoing conditions of registration that the OfS must include for every registered higher education provider. These include: requiring the provider to notify the OfS of any change that affects the accuracy of its register entry; to provide information required by the OfS; and to provide information required by a body designated under Schedule 6 in order for that body to perform its information functions under sections 64 and 65.
- 75 This section forms part of the law of England and Wales.

### Section 9: Mandatory transparency condition for certain providers

- 76 This section requires the OfS to ensure that an ongoing registration condition of a registered higher education provider of a description prescribed by regulations made by the Secretary of State must include a transparency condition. Such a condition requires a provider to provide to the OfS, and publish, information relating to applications, offers, acceptances, completion and attainment rates. This section also provides that the OfS may request such information broken down by gender, ethnicity and socio-economic background.
- 77 This section forms part of the law of England and Wales.

### Section 10: Mandatory fee limit condition for certain providers

- 78 This section requires the OfS to ensure that the ongoing registration conditions of each registered higher education provider of a description prescribed by regulations made by the Secretary of State must include a fee limit condition. Such a condition requires the governing body of a provider to secure that “regulated course fees” do not exceed a fee limit. Schedule 2 sets out how fee limits are determined.
- 79 The “regulated course fees” to which fee limits apply, are fees which are paid by a “qualifying person” where that person undertakes a “qualifying course”. Such a person excludes an international student and is a person who falls within a prescribed description (i.e. persons set out in regulations to be made by the Secretary of State). A “qualifying course” means a higher education course of a description prescribed by regulations made by the Secretary of State. That regulation making power is limited by the restrictions in subsection (7). In addition, subsection (9) provides that a “higher education course” to which a fee limit condition applies does not include any postgraduate course other than a course of initial teacher training.
- 80 This section forms part of the law of England and Wales.

### Section 11: Duty to publish a list regarding the fee limit condition

- 81 Subsection (1) places a requirement on the OfS to publish a list in each year of registered higher education providers who have a fee limit as a condition of registration, and what fee limit, as determined under Schedule 2, applies to each provider.
- 82 Subsection (2) defines a relevant academic year for the purposes of subsection (1).
- 83 Subsection (3) requires the OfS to send a copy of the published list to the Secretary of State who must, in turn, lay it before Parliament; and subsection (4) is a power for the Secretary of State to prescribe by regulations the date by which the list must be published by the OfS.
- 84 This section forms part of the law of England and Wales.

## Section 12: Mandatory access and participation plan condition for certain institutions

- 85 This section allows a provider to request an access and participation plan as an initial or ongoing requirement of registration, where the provider will also be subject to a fee limit condition and wishes to access the higher fee limits available to those with access and participation plans. Sections 29 to 34 set out the requirements for the approval and content of such plans.
- 86 The governing body of a provider will not be considered to have failed to deliver a requirement of its access and participation plan if it has taken all reasonable steps to meet that requirement.
- 87 This section forms part of the law of England and Wales.

## Other registration conditions

### Section 13: Other initial and ongoing registration conditions

- 88 This section lists what the conditions of initial and ongoing registration may relate to, however this list is not exhaustive.
- 89 Some of these conditions may require payment of fees or may relate to public interest governance. Further details are in sections 14, 67, 70 and 71 respectively.
- 90 One of the conditions may relate to the quality of, or standards applied to, higher education provided by higher education providers. Where there are sector-recognised standards, subsection (2) provides that the OfS may only impose registration conditions relating to standards which relate to matters which are covered by the sector-recognised standards, and relate to, and require the application of, the sector-recognised standards in respect of those matters. "Sector-recognised standards" is defined in subsection (3).
- 91 Under subsection (1)(c) a condition may relate to registered higher education institutions having in place a "student protection plan" which has been approved by the OfS. Subsection (4) defines a student protection plan as a plan designed to protect students if an event specified by the OfS occurs (e.g. a course closure).
- 92 Under subsection (1)(f) a condition may require registered higher education providers to take such steps that the OfS considers appropriate to facilitate cooperation between providers and one or more electoral registration officers in England for the purpose of further enabling electoral registration of students. As when exercising any of its functions, the OfS must have regard to relevant guidance issued by the Secretary of State in relation to how the OfS applies such a condition.
- 93 This section forms part of the law of England and Wales.

### Section 14: Public interest governance condition

- 94 This section defines a "public interest governance condition" in relation to a provider as a requirement for the provider's governing documents to be consistent with the list of principles applicable to that provider. This section makes provision for what the list of principles must include, including the principle of academic freedom as described in subsection (7). This section also requires the OfS to consult certain persons before determining or revising the list. The list, and any revised version, must be published.
- 95 This section forms part of the law of England and Wales.

## Enforcement of ongoing registration conditions

### Section 15: Power to impose monetary penalties

- 96 This section enables the OfS to impose monetary penalties on providers that do not comply with ongoing conditions of registration. Schedule 3 makes further provision about such penalties.
- 97 This section forms part of the law of England and Wales.

### Section 16: Suspension of registration

- 98 This section enables the OfS to suspend a provider from the register if the provider appears to have breached an ongoing registration condition. The OfS must specify, and the register must reflect, the purpose for which the provider is suspended (this may, for example, limit the provider's eligibility for funding). Subsection (4) specifies when the suspension ends.
- 99 This section forms part of the law of England and Wales.

### Section 17: Suspension: procedure

- 100 This section allows the OfS to suspend a provider from the register - without giving the provider prior notice - if the OfS thinks there is an urgent need to protect public funds. In every other case the OfS must, before coming to a decision on whether to suspend a provider, notify the provider of its intention to suspend, and have regard to any representations the provider makes during the specified period. The OfS must notify the provider of its decision.
- 101 This section forms part of the law of England and Wales.

### Section 18: De-registration by the OfS

- 102 This section requires the OfS to remove a provider from the register if it becomes aware that the provider is not (or no longer intends to become) an English higher education provider.
- 103 The OfS may also remove a provider from the register if the provider appears to have breached an ongoing registration condition and the OfS has previously imposed a suspension or a monetary penalty, or if the OfS doesn't consider a monetary penalty or suspension would be sufficient to deal with the breach.
- 104 Subsections (5) and (6) enable the OfS to put transitional arrangements in place. For example, arrangements could be made so that the provider continues to be treated as registered in order to enable existing students at the institution to continue to access student support.
- 105 For voluntary de-registrations see section 22.
- 106 This section forms part of the law of England and Wales.

### Section 19: De-registration by the OfS: procedure

- 107 Before coming to a decision on whether to de-register a provider under section 18 the OfS must, under this section, notify the provider of its intention to do so and have regard to any representations the provider makes during the specified period. The OfS must notify the provider of its decision. The de-registration cannot take effect when an appeal concerning the removal could be brought or is pending, unless the provider notifies the OfS that it does not intend to appeal.
- 108 This section forms part of the law of England and Wales.

## Section 20: De-registration: appeals

109 This section makes provision for appeals to the First-tier Tribunal in the event that the OfS decides to remove a provider from the register under section 18. A provider may appeal against the OfS's decision to remove it from the register and/or against the date upon which that removal takes effect. Subsection (2) sets out the grounds for appeal. Subsection (3) sets out the remedies available to the Tribunal.

110 This section forms part of the law of England and Wales.

## Section 21: Refusal to renew an access and participation plan

111 This section applies in circumstances where a registered higher education provider is required as a condition of registration to have an access and participation plan and fails, in the view of the OfS, to comply with a requirement of that plan or with a fee limit condition imposed under section 10.

112 In those circumstances the OfS is able to refuse to approve a new plan once the current one comes to an end. That refusal may last for a period that the OfS specifies in a notice. The Secretary of State may make regulations about the matters the OfS should take into account in deciding whether or not to refuse, the procedure it should follow when giving notice of refusal and the effect that the notice has.

113 Such regulations must also provide for a review process before any decision to refuse becomes final. Subsection (4) imposes that requirement and specifies further detail about what regulations must contain about the review procedure.

114 This section forms part of the law of England and Wales.

## Voluntary de-registration

### Section 22: Voluntary de-registration

115 This section requires the OfS to remove a provider from the register if the provider makes an application (in accordance with any requirements devised by the OfS) to be removed. The OfS can put transitional arrangements in place. For example, arrangements could be made so that the provider continues to be treated as registered in order to enable existing students at the institution to continue to access student support.

116 This section forms part of the law of England and Wales.

## Quality and standards

### Section 23: Assessing the quality of, and the standards applied to, higher education

117 Subsection (1) gives the OfS a power to assess, or make arrangements for the assessment of the quality of, and the standards applied to, higher education by English higher education providers.

118 Subsection (2) places a duty on the OfS to assess, or make arrangements for the assessment of the quality of, and the standards applied to, higher education, provided by:

- a. institutions that have applied to be registered, for the purposes of determining whether such institution meets any initial registration condition relating to quality or standards; and
- b. registered higher education providers, for the purposes of determining whether they continue to meet any ongoing registration condition relating to quality or standards.

119 Where there are sector-recognised standards, any assessment of standards under this section must only relate to matters which are covered by the sector-recognised standards; and relate to, and assess the standards applied against the sector-recognised standards.

“Sector-recognised standards” is defined in section 13.

120 This section forms part of the law of England and Wales.

#### Section 24: Quality Assessment Committee

121 This section requires the OfS to establish a committee, called the Quality Assessment Committee. The committee has the function of giving advice to the OfS on the exercise of its functions under section 23 and such other functions as the OfS confers on it.

122 When a body is designated under Schedule 4 to perform functions under section 23, the Quality Assessment Committee also has the function of giving advice to the OfS on the exercise by the designated body of those functions.

123 Subsections (4) to (6) make provision for the composition of the Quality Assessment Committee. Subsection (7) applies Schedule 1 to that committee, as it applies to other committees established by the OfS under paragraph 8 of that Schedule.

124 This section forms part of the law of England and Wales.

#### Section 25: Rating the quality of, and the standards applied to, higher education

125 This section gives the OfS a power to make arrangements for a scheme to give ratings to English, and where appropriate consent is given, Welsh, Scottish and Northern Irish higher education providers regarding the quality of, and the standards applied to, the higher education provided by them. In practice, this power enables the OfS to run the Teaching Excellence Framework which will assess higher education providers according to the quality of the teaching that they provide.

126 Subsections (2) and (3) make provision about the consent required of the Welsh or Scottish Ministers or the Department for the Economy in Northern Ireland to enable Welsh, Scottish or Northern Irish higher education providers to participate in any scheme established under subsection (1).

127 This section forms part of the law of the United Kingdom.

#### Section 26: Report on operation of section 25 schemes

128 This section places a duty on the Secretary of State before the end of the initial period to appoint a suitable independent person (defined by subsections (2) and (3)) to prepare a report on the operation during that initial period of any scheme or schemes established under section 25. The initial period, defined in subsection (7), means the period of one year beginning with the date on which section 25 comes into force.

129 Subsection (4) requires that, as soon as possible after the initial period, the appointed person must prepare the report send it to the Secretary of State, who must lay it before Parliament (subsection (6)).

130 Subsection (5) sets out the required scope of the report.

131 This section forms part of the law of England and Wales.

## Section 27: Performance of assessment functions by a designated body

132 This section makes provision for a body to be designated in accordance with Schedule 4 to carry out “assessment functions”. These functions are the functions of the OfS under section 23 and the functions of the relevant body under section 46. Subsection (3) provides which functions under section 23 cease to be exercisable by the OfS where a body has been designated.

133 Subsections (4) to (7) make provision for the OfS by notice to require a designated body to provide it with information which the body holds for the purpose of the performance of the assessment functions.

134 This section forms part of the law of England and Wales.

## Section 28: Power of designated body to charge fees

135 This section enables a body designated under Schedule 4 to charge fees to higher education providers for carrying out the assessment functions under section 23 and section 46. The fees charged may, for example, relate to the costs of the performance of assessment functions under section 23 by the designated body, or activities undertaken or services provided by the designated body pursuant to it giving advice to the OfS in relation to the granting, varying or revoking of degree awarding powers under section 46. The fees charged may also be calculated subject to the provisions and limitations set out in subsections (3) to (8).

136 Subsections (3) to (8) provide that, for each category of fee above, fees may be calculated by reference to costs incurred by the designated body in the performance of its functions under the relevant subsection of section 23 or section 46, whether or not they relate to the provider being charged, or its general functions (defined in subsection 10). They further provide that the overall fees charged in a 12-month period must not exceed the total costs incurred by the designated body in carrying out those functions over that period.

137 The designated body is required to publish a statement of the amount of fees which it charges under this section, and to publish revised statements if the fees change or the way they are calculated changes.

138 This section forms part of the law of England and Wales.

## Access and participation

### Section 29: Power to approve an access and participation plan

139 This section provides that an English higher education institution may apply to the OfS for its approval of an access and participation plan. The purpose of the plan will be to satisfy an initial or ongoing registration condition relating to access and participation in higher education imposed under section 12.

140 The OfS can approve a proposed plan and issue guidance to institutions about the matters it will take into account in considering whether to approve plans. Subsections (5) to (7) allow the Secretary of State to make regulations which deal with the procedure for approval, including the matters that the OfS can take into account for approval purposes and publication requirements.

141 This section forms part of the law of England and Wales.

### Section 30: Duration of a plan

142 This section requires a plan to specify the length of time for which it will last. That period must not exceed any maximum length set out in regulations made by the Secretary of State.

143 This section forms part of the law of England and Wales.

### Section 31: Content of a plan: fees

144 This section provides that access and participation plans must specify or describe the maximum amount of fees the provider will charge for each course to which a fee limit applies, during each academic year for which the plan will be in force.

145 Where the institution has been given a high level quality rating the fee limits cannot exceed the applicable higher amount (determined under the arrangements set out in paragraph 2 of Schedule 2). If it does not have that rating then the fees cannot exceed an intermediate (or “sub-level”) amount (also set under the same paragraph of Schedule 2).

146 This section forms part of the law of England and Wales.

### Section 32: Content of a plan: equality of opportunity

147 This section sets out that access and participation plans must include any provisions relating to the promotion of equality of opportunity in connection with access to and participation in higher education which are required by regulations made by the Secretary of State, and may include additional content. It also provides examples of provisions that may be required by regulations, and sets out matters that may not be required.

148 This section forms part of the law of England and Wales

### Section 33: Variation of a plan

149 This section states that regulations made by the Secretary of State can allow for plans approved by the OfS to be varied, provided that the variation is approved by the OfS.

150 This section forms part of the law of England and Wales.

### Section 34: Review of decisions on approval or variation

151 This section ensures that any decision to approve a plan or subsequently to vary an approved plan can be reviewed before it becomes final. It does so by ensuring that any regulations made by the Secretary of State under section 29 about the approvals process or under section 33 about varying a plan must create a review procedure. The key features that regulations must include are that:

- a. any approval or variation decision should be provisional;
- b. the institution should be able to apply for review by a person or panel appointed and paid by the Secretary of State;
- c. regulations must state the grounds on which a provisional decision can be reviewed;
- d. the OfS must reconsider the provisional decision in light of the person or panel’s recommendations.

152 This section forms part of the law of England and Wales.

### Section 35: Advice on good practice

153 This section allows the OfS to identify good practice about promoting equality of opportunity in connection with access to and participation in higher education, and give related advice to higher education providers.

154 This section forms part of the law of England and Wales.

### Section 36: Duty to protect academic freedom

155 This section requires that, in performing its functions of approving, varying or refusing to renew access and participation plans, the OfS must protect academic freedom. This includes, in particular, the freedom of institutions to determine the contents and manner of teaching of their courses, who teaches those courses and their own admissions criteria.



156 The duty to protect academic freedom in this section applies in place of the duty in subsection (1)(a) of section 2 to have regard to the need to protect institutional autonomy in relation to the freedoms of providers relating to course content, appointment of academic staff, and admission of students, and the freedoms of academic staff, mentioned in subsections (8)(b) and (c) of section 2.

157 This section forms part of the law of England and Wales.

### Section 37: Power of Secretary of State to require a report

158 This section enables the Secretary of State to direct the OfS to report in its annual report or in a special report to the Secretary of State on specified matters relating to equality of opportunity. A special report must be laid before Parliament by the Secretary of State.

159 This section forms part of the law of England and Wales.

## Student transfers

### Section 38: Duty to monitor etc the provision of arrangements for student transfers

160 This section imposes duties on the OfS to: monitor the availability of student transfer arrangements provided by registered higher education providers; monitor the take-up by students of the arrangements monitored by the OfS; and include in its annual report a summary of the conclusions drawn from its monitoring.

161 The OfS's monitoring duty can be met by focussing on all, or particular descriptions of, registered higher education provider or student transfer arrangements.

162 This section also confers a power on the OfS to facilitate, encourage or promote awareness of the provision of student transfer arrangements by registered higher education providers.

163 The student transfers which this section covers are transfers of students from one higher education course to another within a registered higher education provider, between registered higher education providers or between a registered higher education provider and another higher education provider in England, Wales, Scotland or Northern Ireland.

164 This section forms part of the law of England and Wales.

## Powers to give financial support

### Section 39: Financial support for registered higher education providers

165 This section confers a power on the OfS to provide financial support (through grants, loans and other payments) in relation to the provision of education by registered higher education providers of a description prescribed by regulations under this section.

166 This section forms part of the law of England and Wales.

### Section 40: Financial support for certain institutions

167 This section confers a power on the OfS to provide financial support (through grants, loans and other payments) for higher education courses prescribed by regulations under this section where such courses are provided by certain institutions. These institutions are further education providers and those maintained or assisted by local authorities (and they may or may not be registered higher education providers).

168 This section forms part of the law of England and Wales.

## Section 41: Financial support: terms and conditions

169 This section makes provision regarding the terms and conditions of financial support provided by the OfS under sections 39 and 40. The OfS's terms and conditions may, in particular, relate to repayment of sums, payment of interest and the provision of information.

170 This section requires the OfS to consult such persons as it considers appropriate before determining what terms and conditions to impose.

171 This section forms part of the law of England and Wales.

## Powers to grant degrees etc

### Section 42: Authorisation to grant degrees etc

172 This section enables the OfS to authorise, by order, registered higher education providers to grant taught and research awards (including degrees). Specific requirements are imposed where the authorisation is to grant only foundation degrees, including that the registered higher education provider being authorised must be an English further education provider.

173 Degree awarding powers may be of a specified nature (e.g. single subject degree awarding powers), they may be time-limited and they may restrict the provider's ability to grant awards to students who are enrolled at the provider when they complete their courses of study.

174 This section forms part of the law of England and Wales.

### Section 43: Supplementary powers with authorisation

175 This section sets out supplementary powers that may be given with an authorisation under section 42. Authorisations may include powers which enable providers to authorise other institutions to grant awards on their behalf. This section also makes provision enabling providers to grant joint awards, honorary degrees and degrees to members of staff. All authorisations enable providers to revoke awards.

176 This section forms part of the law of England and Wales.

### Sections 44 and 45: Variation or revocation of section 42 authorisation and other authorisations to grant degrees etc

177 These sections set out the OfS's powers to vary or revoke, by order, authorisations to grant taught awards and research awards. The OfS can vary or revoke the authorisations it has granted under section 42. It can also vary or revoke the degree awarding powers of other English higher education providers, regardless of whether they were obtained on an indefinite or on a renewable basis. The one exception concerns certain degrees granted by virtue of the Ecclesiastical Licences Act 1533: see section 55.

178 The OfS can only revoke authorisations (see sections 44 and 45) if any of the three conditions specified in the respective section is met. The three conditions relate to registration, quality and standards, and quality and standards following a change of circumstances. Any other pre-existing power to vary or revoke degree awarding powers of English higher education providers ceases to exist once section 45 comes into force.

179 This section forms part of the law of England and Wales.

## Section 46: Grant, variation or revocation of authorisation: advice on quality etc

180 This section requires the OfS to seek and have regard to advice from the relevant body (being the body designated to perform assessment functions under Schedule 4 or, where there is no such body, a committee established by the OfS) on the quality of and standards applied to higher education provided by a provider before the OfS grants, varies, or on grounds of quality or standards, revokes degree-awarding powers. The advice must be informed by the views of persons who, amongst them, have a range of specified experience. The advice must include the relevant body's view on whether the provider has the ability to maintain appropriate quality and appropriate standards. Where the advice concerns the award, variation or revocation of research degree awarding powers, that advice must also be informed by the views of UKRI. The section makes provision for where there are one or more sector-recognised standards.

181 This section forms part of the law of England and Wales.

## Section 47: Grant of authorisation: notification of new providers

182 This section requires the OfS to notify the Secretary of State as soon as possible after it makes an order authorising a registered higher education provider to grant taught awards if that provider has not previously operated under a validation arrangement.

183 This section forms part of the law of England and Wales.

## Section 48: Variation or revocation of authorisation: procedure

184 Under section 48 the OfS must notify a provider of its intention to vary or revoke degree awarding powers, and have regard to any representations the provider makes during the specified period, before coming to a decision on whether to vary or revoke. The OfS must notify the provider of its decision. The order implementing the decision cannot be made, and the variation or revocation cannot take effect, when an appeal could be brought or is pending - unless the provider notifies the OfS that it does not intend to appeal.

185 This section forms part of the law of England and Wales.

## Section 49: Appeals against variation or revocation of authorisation

186 This section provides for appeals to the First-tier Tribunal against a decision by the OfS to vary or revoke degree awarding powers. Providers may appeal against a decision to vary or revoke degree awarding powers. They may also appeal against the date on which a variation or revocation takes effect. If the appeal includes an appeal about a decision to revoke degree awarding powers, then the Tribunal must consider the decision afresh and the grounds for appeal are not limited. Otherwise, a provider can appeal on the grounds that the decision (i.e. to vary degree awarding powers or to specify a particular date on which the variation or revocation takes effect) was based on an error of fact, was wrong in law, or was unreasonable. The Tribunal has the power to withdraw or confirm the OfS's decision, vary the date on which the variation or revocation is to take effect and may remit the decision (and matters relating to it) to the OfS. If the appeal includes an appeal about a decision to revoke degree awarding powers, then the Tribunal can also substitute the OfS's decision with any other decision that the OfS could have made.

187 This section forms part of the law of England and Wales.

## Section 50: Validation by authorised providers

188 This section enables the OfS to commission registered higher education providers with degree awarding powers to offer to validate other registered higher education providers' taught awards. Validation, for the purposes of this section, is where an institution with degree awarding powers grants taught awards to students at another provider, or authorises another provider to grant taught awards on its behalf.

189 This section forms part of the law of England and Wales.

### Section 51: Validation by the OfS

190 This section sets out the powers of the Secretary of State to authorise, by regulations, the OfS to enter into validation arrangements with registered higher education providers. The validation arrangements may only concern taught awards and the regulations may: require the validation arrangements to conform to prescribed conditions; enable the OfS to authorise registered higher education providers to provide some or all validation arrangements on behalf of the OfS; enable the OfS to deprive a person of an award. The Secretary of State may only exercise these powers after having regard to advice from the OfS.

191 This section forms part of the law of England and Wales.

### Section 52: Sections 42 to 49: consequential amendments

192 This section sets out consequential amendments to section 76 of the Further and Higher Education Act 1992.

193 This section forms part of the law of England and Wales.

### Sections 53 and 54: Unrecognised degrees

194 These sections amend the Education Reform Act 1988 to limit the unrecognised degrees offence so that it does not apply to awards granted in the course of business by providers (and the OfS), pursuant to degree awarding powers that have been granted, or varied, under this Act.

195 The amendments also transfer to the OfS the Secretary of State's powers and duties under the 1988 Act to make recognised award orders, recognised body orders and listed body orders. Providers (and the OfS) whose degree awarding powers are granted or varied under this Act will not, by virtue of being included in a recognised body order, be conclusively presumed as able to grant degrees etc. Instead, reference should be had to the orders and regulations made under sections 42, 45 and 51 of this Act. The Welsh and Scottish Ministers retain the power to make recognised award orders and recognised and listed body orders.

196 These sections form part of the law of England, Wales and Scotland.

### Section 55: Saving for right to grant degrees under the Ecclesiastical Licences Act 1533

197 This section provides that nothing in Part 1 of this Act can affect the right of the Archbishop of Canterbury (or any other person) to award degrees under the Ecclesiastical Licences Act 1533 where those degrees do not require students to complete an appropriate course of study, an appropriate programme of supervised research or an appropriate assessment.

198 This section forms part of the law of England and Wales.

## Powers in relation to “university” title

### Section 56: Use of “university” in title of institution

199 This section amends section 77 of the Further and Higher Education Act 1992 and transfers the responsibility for approving the use of “university” title in a provider's name under this section from the Privy Council to the OfS. Existing provisions are retained for Wales.

200 The OfS may only consent to an institution's use of “university” title if that institution is a registered higher education provider. The OfS has to have regard to factors in guidance given by the Secretary of State. Before giving the guidance the Secretary of State must have consulted the relevant bodies and persons listed.

201 Approval given by the Privy Council under this section prior to this section coming into force continues to be valid.

202 This section forms part of the law of England and Wales.

### Section 57: Unauthorised use of “university” in title of institution etc

203 For providers in England, section 39 of the Teaching and Higher Education Act 1998 is amended to provide that registered higher education providers in England cannot call themselves a university unless the inclusion of that word is authorised by or by virtue of an Act, a Royal Charter or the OfS. Existing provisions are retained for Wales.

204 This section amends section 39 of the Teaching and Higher Education Act 1998 so that the OfS can approve the use of “university” title by any registered higher education provider if such use cannot be authorised by virtue of any other Act (other than the Companies Act 2006) or Royal Charter. This means that the OfS is able to approve “university” title for all types of providers including those alternative providers which prior to this Act were only able to obtain consent under the Companies Act 2006. The OfS has to have regard to factors in guidance given by the Secretary of State when consenting to an institution’s use of university title. Before giving the guidance the Secretary of State must have consulted the relevant bodies and persons listed.

205 Any consent obtained from the OfS does not affect any requirement to obtain approval for the use of the word “university” in a company, limited liability partnership or business name, under sections 56 or 1194 of the Companies Act 2006.

206 Consents given by the Privy Council under section 39 of the Teaching and Higher Education Act 1998 prior to this section coming into force remain valid.

207 This section forms part of the law of the United Kingdom.

### Section 58: Revocation of authorisation to use “university” title

208 This section gives the OfS powers to revoke, by order, an authorisation, consent or other approval for an institution in England to use the title of “university”.

209 The OfS may only revoke university title if any of the conditions specified in subsections (4) to (6) are met.

210 The OfS does not, however, have the power to revoke any approval obtained in relation to the use of the word “university” in a company, limited liability partnership or business name, under the Companies Act 2006.

211 Any other power to revoke university title (except any approval required under the Companies Act 2006) ceases to exist on the coming into force of this section.

212 This section forms part of the law of England and Wales.

### Section 59: Revocation of authorisation: procedure

213 Under section 59 the OfS must notify a provider of its intention to revoke approval etc to “university” title, and must have regard to any representations the provider makes during the specified period, before coming to a decision on whether to make the revocation. The OfS must notify the provider of its decision. The order implementing the decision cannot be made, and the revocation cannot take effect, when an appeal could be brought or is pending - unless the provider notifies the OfS that it does not intend to appeal.

214 This section forms part of the law of England and Wales.

## Section 60: Appeals against revocation of authorisation

215 This section sets out the rights of appeal to the First-tier tribunal against a decision by the OfS to revoke “university” title. The governing body of an institution may appeal against a decision to revoke an approval etc of a “university” title. It may also appeal against the specified date on which a revocation takes effect. If the appeal includes an appeal against a decision to revoke “university” title, then the Tribunal must consider the decision afresh and the grounds for appeal are not limited. If the appeal only concerns the date when a revocation takes effect, then a provider can only appeal on the ground that the decision was based on an error of fact, was wrong in law, or was unreasonable. The Tribunal has the power to withdraw or confirm the decision, vary the date on which the revocation is to take effect and may remit the decision (and matters relating to it) to the OfS. If the appeal includes an appeal about a decision to revoke “university” title, then the Tribunal can also substitute the decision with any other decision that the OfS could have made.

216 This section forms part of the law of England and Wales.

## Powers of entry and search

### Section 61: Entering and searching premises with a warrant

217 This section and Schedule 5 enable the OfS or the Secretary of State to apply to a justice of the peace for a warrant to allow authorised persons to enter and search certain registered higher education providers’ premises.

218 Premises of institutions which act on behalf of such providers to deliver higher education courses, for example, as part of a sub-contracting arrangement, are within scope of the powers.

219 A warrant can only be granted if a justice of the peace is satisfied that the requirements in paragraph 1(3) of Schedule 5 are met.

220 If a warrant is granted, it may allow an authorised person to enter and search premises and confer on them related powers, such as powers to seize and retain items to determine whether there has been a breach of a relevant condition to which the provider is subject. There is an exception for excluded items such as those subject to legal privilege.

221 The warrant may permit or require a constable to accompany an authorised person and that constable may use reasonable force if necessary.

222 It is an offence to intentionally obstruct a person exercising the powers conferred by warrant, or to fail to comply with a reasonably imposed requirement, without reasonable excuse. Provision is made regarding protection from self-incrimination.

223 This section forms part of the law of England and Wales.

## Information powers

### Section 62: Power to require information from unregistered providers

224 This section makes provision for the OfS to require, by notice, information from unregistered providers. It also makes provision for the consequences of a failure by an unregistered provider to comply with such a notice.

225 This section forms part of the law of England and Wales.

## Section 63: Cooperation and information sharing by OfS

226 This section makes provision for cooperation and information sharing by the OfS. In particular, this section makes provision for the OfS to cooperate and share information with other bodies so that it can carry out its own functions. Provision is also made for the OfS to cooperate and share information with the Privy Council and other bodies prescribed by regulations if it helps the efficient performance of the functions of the Privy Council or such functions of those other bodies as are prescribed by regulations. The Privy Council is specified in this section as this will enable the OfS to work with the Council, who may retain oversight over some providers, such as those incorporated by charter.

227 Any data sharing must be in accordance with the Data Protection Act 1998.

228 This section forms part of the law of England and Wales.

## Information duties

### Section 64: Duty to compile and make available higher education information

229 This section sets out a requirement for compiling and making available to the OfS, UKRI and Secretary of State appropriate information relating to higher education provision. It specifies that the body responsible for compiling and making available this information is either a designated body or the OfS. It also makes provision for determining the manner in which information is to be made available and what information is appropriate for compiling, including a requirement to consider what would be helpful to the OfS, UKRI and the Secretary of State and a requirement to obtain the views of UKRI, the Secretary of State and any other person considered appropriate. It further makes provision about cooperation and the desirability of reducing burdens on registered higher education providers.

230 This section forms part of the law of England and Wales.

### Section 65: Duty to publish English higher education information

231 This section sets out a requirement for the publication of appropriate information relating to higher education provision. It specifies that the body responsible for publishing this information or arranging for it to be published is either a designated body or the OfS. It also makes provision for determining the frequency and manner of publication and what information is appropriate information for these purposes, including a requirement to consider what would be helpful to certain persons and providers and a requirement to consult. It further makes provision about cooperation and the desirability of reducing burdens on registered higher education providers.

232 This section forms part of the law of England and Wales.

### Section 66: Designated body

233 This section makes provision for a body to be designated in accordance with Schedule 6 to carry out the compilation and publication functions under sections 64 and 65. It requires that where a body has been designated the OfS must seek the views of that body in relation to those functions. It also makes provision for the OfS, UKRI or the Secretary of State by notice to require a designated body to provide it with information which the body holds for the purpose of the performance of its functions and for the consequences of a failure by that body to comply with such a notice.

234 This section forms part of the law of England and Wales.

## Section 67: Power of designated body to charge fees

235 This section enables a body designated under Schedule 6 to charge an annual fee to registered higher education providers for carrying out the compilation and publication functions under sections 64 and 65. It makes provision for the amount of fee payable by a provider. It also makes provision for the publication of statements relating to the fees charged and the basis on which they are calculated.

236 This section forms part of the law of England and Wales.

## Financial sustainability

### Section 68: Duty to monitor and report on financial sustainability

237 This section gives the OfS a duty to monitor and report on the financial sustainability of registered higher education providers.

238 Subsection (1) sets out the duty to monitor and which providers it applies to. The duty applies to those registered providers who receive any grant, loan or other funding from the OfS under its funding powers in sections 39 and 40, or are eligible to receive such funding, even if they do not receive it. It also applies to registered providers that are designated for student support under section 22 of the Teaching and Higher Education Act 1998 and therefore may receive funding from tuition fee loans.

239 Subsection (2) provides for a duty upon the OfS to include in its annual report to the Secretary of State a financial sustainability summary.

240 Subsections (3) and (4) set out what a financial sustainability summary is. It is a summary of the OfS's conclusions on relevant patterns, trends and any other matters that the OfS has identified in performing its monitoring duty under subsection (1) and thinks it appropriate to bring to the attention of the Secretary of State. The patterns, trends and other matters can relate to some or all of the providers monitored.

241 Finally, subsection (5) makes clear that the annual report referred to in subsection (2) is the same annual report stipulated in paragraph 13 of Schedule 1, and that the definition of financial year used is the same as is used in that Schedule.

242 This section forms part of the law of England and Wales.

## Efficiency studies etc

### Section 69: Studies for improving economy, efficiency and effectiveness

243 This section confers on the OfS a power to arrange for studies to improve economy, efficiency and effectiveness in the management or operations of a registered higher education provider. It includes provision to ensure that those promoting or carrying out efficiency studies have access to the information they reasonably need.

244 This section forms part of the law of England and Wales.

## Funding of the OfS

### Section 70: Registration fees

245 This section enables the OfS to charge an institution fees for initial and ongoing registration. Any fee charged must be in accordance with regulations made by the Secretary of State, subject to the consent of HM Treasury. This section also specifies what matters may be included in the regulations.

246 This section forms part of the law of England and Wales.



## Section 71: Other fees

247 This section provides a power for the OfS to charge a specific fee, distinct from the registration fee, for any activity or service arising in the performance of any of its functions. Any fee charged must be in accordance with regulations made by the Secretary of State, subject to the consent of HM Treasury. This section also specifies matters that may be included in the regulations. It also provides that costs incurred by the OfS under section 70 may not be charged for under this section.

248 This section forms part of the law of England and Wales.

## Section 72: Retention of fee related income

249 This section provides that the OfS can retain its income from registration fees, other fees, and recovery of costs, only if the Secretary of State directs that it can, and with the consent of HM Treasury. Income from imposing penalties and interest cannot be retained by the OfS and must be paid to the Secretary of State.

250 This section forms part of the law of England and Wales.

## Section 73: Costs recovery

251 This section provides for the OfS, by notice, to recover certain costs from a provider where these costs have been incurred by the OfS through imposing a monetary penalty or suspension on that provider or through removing the provider from the register.

252 Schedule 7 contains further provisions on the imposition of a requirement to pay these costs and their recovery and the provider's rights of appeal.

253 This section forms part of the law of England and Wales.

## Section 74: Grants from the Secretary of State

254 This section confers a power on the Secretary of State to make grants to the OfS and allows the Secretary of State to attach terms and conditions to such grants (including in relation to repayment of sums and payment of interest). Terms and conditions may be framed by reference to particular courses of study.

255 This section also includes a number of requirements and restrictions in relation to the terms and conditions that may be imposed to protect the institutional autonomy of providers. In particular, the Secretary of State must have regard to the need to protect the institutional autonomy of English Higher education providers (as defined in section 2(8) of this Act) when determining what terms and conditions to impose.

256 In addition, there are specific restrictions where terms and conditions relate to the provision of financial support by the OfS under section 39 or 40 of this Act.

257 This section forms part of the law of England and Wales.

## Regulatory framework

### Section 75: Regulatory framework

258 This section imposes a duty on the OfS to publish a regulatory framework, from time to time, which the OfS must have regard to when carrying out its functions.

259 The regulatory framework covers:

- a statement of how the OfS intends to carry out its functions under this Act (for example, those relating to the register, setting and enforcing compliance with registration conditions, quality and standards, and access and participation); and

- guidance for registered higher education providers on the general ongoing registration conditions (see sections 5 to 14 of this Act). This guidance must include guidance to help providers understand how to comply with the general ongoing registration conditions.

260 The regulatory framework is required to set out how the OfS will operate a risk-based approach to carrying out its functions (see also section 7 of this Act for provision on this risk-based approach).

261 This section also imposes a requirement on the OfS to consult, in particular, bodies representing the interests of higher education providers and students before it publishes its regulatory framework and, where the regulatory framework is published, it requires the Secretary of State to lay a copy before Parliament.

262 This section forms part of the law of England and Wales.

## Supplementary functions

### Section 76: Secretary of State's power to confer supplementary functions

263 This section enables the Secretary of State to make regulations conferring supplementary functions on the OfS. These are functions that may be exercised for the purposes of the performance of the Secretary of State's statutory functions, or the doing of anything else that the Secretary of State has power to do. The functions must relate to an institution in England which provides higher education, or may do so, or to the activities of such an institution.

264 This section also enables the Secretary of State to direct that the Secretary of State's functions in relation to an institution's property may be exercised by the OfS, where the Secretary of State is entitled to a right or interest in respect of that property.

265 This section forms part of the law of England and Wales.

## Directions

### Section 77: Secretary of State's power to give directions

266 Subsection (1) gives the Secretary of State the power to give general directions to the OfS about the performance of any of its functions. The power is exercised by regulations and is subject to the limitations in subsection (3). When giving directions the Secretary of State must have regard to the need to protect the institutional autonomy of English higher education providers.

267 The Secretary of State may only exercise the powers in this section in relation to a particular higher education provider when giving directions which are financial support directions, as defined in subsection (5).

268 The OfS is under a statutory obligation to comply with any directions given under this section.

269 This section forms part of the law of England and Wales.

## Powers of Secretary of State to obtain information or advice

### Section 78: Power to require information and advice from the OfS

270 This section places a duty on the OfS to provide information or advice in relation to its functions to the Secretary of State on request. The information and advice must be provided in the form requested by the Secretary of State.

271 This section forms part of the law of England and Wales.

## Section 79: Power to require application-to-acceptance data

272 This section makes provision for the Secretary of State to require, by notice, application-to-acceptance information from bodies providing admissions services to English higher education providers for use for qualifying research. This section also defines what is meant by ‘application-to-acceptance’ information and ‘qualifying research’.

273 This section makes provision for the Secretary of State to enforce a request for such information.

274 This section forms part of the law of the United Kingdom.

## Section 80: Use of application-to-acceptance data for research purposes

275 This section makes provision for how the Secretary of State may use the information obtained under section 79 and with whom the information may be shared. This section also makes provision for the circumstances in which a product of research using information obtained under section 79 may be published. The Secretary of State must publish guidance setting out the factors that will be taken into account when approving a body or individual with whom the information may be shared.

276 Any individual or body found to have misused the information they have received under this section is liable for prosecution under the Data Protection Act 1998.

277 This section forms part of the law of the United Kingdom.

## HEFCE and the DFA

### Section 81: Higher Education Funding Council for England

278 This section dissolves the Higher Education Funding Council for England (HEFCE) to allow for the creation, by this Act, of the OfS and UKRI.

279 This section forms part of the law of England and Wales.

### Section 82: The Director of Fair Access to Higher Education

280 This section provides that the office of Director of Fair Access to Higher Education ceases to exist.

281 This section forms part of the law of England and Wales.

## Interpretation

### Section 83: Meaning of “English higher education provider” etc

282 This section sets out definitions of the main terms used in Part 1 of this Act.

283 The definitions in this section have the effect that an “English higher education provider” is any provider of one or more higher education courses as defined by the Education Reform Act 1988, whose activities are carried on, or principally carried on, in England. Any provider, including a university, a further education college or a provider who prior to this Act was regarded as an ‘alternative provider’ (not regulated by HEFCE) who meets this test will qualify as an English higher education provider. A provider must be, or intend to become, an English higher education provider before it can register with the OfS.

284 This section forms part of the law of the United Kingdom.

## Section 84: Designation of other providers of higher education

285 This section provides for the Secretary of State to designate a provider of higher education as an institution for the purposes of Part 1 of this Act if certain conditions are met. The Secretary of State may make regulations in relation to the procedure for obtaining, making and withdrawing such designations and the effect of a withdrawal.

286 This section forms part of the law of England and Wales.

## Section 85: Other definitions

287 This section sets out the definition of certain terms which are used in Part 1 of this Act.

288 This section forms part of the law of England and Wales.

# Part 2: Other Education Measures

## Financial support for students

### Section 86: Power to make alternative payments

289 In England and Wales, student loans for higher and further education are provided pursuant to regulations made under section 22 of the Teaching and Higher Education Act 1998. This section amends section 22 of the 1998 Act to enable regulations to make provision for alternative student finance, alongside grants or loans. This additional type of student finance is called an “alternative payment”.

290 Section 22 of the 1998 Act sets out what regulations may include, for instance, eligibility criteria for student support, maximum amounts of support, the categories of attendance eligible for support, and the terms and conditions for repayment. The amendments to this section ensure that regulations dealing with alternative payments can make the same provision.

291 The Government intends that regulations made under an amended section 22 of the 1998 Act support the provision of alternative student finance with a view to helping those who, for religious reasons, might feel they do not wish to access interest-bearing loans to support their education. The Government intends that alternative student finance are available to those of all faiths and none.

292 Alternative student finance offers no financial advantage or disadvantage relative to equivalent student loans. This section also ensures that regulations can provide that bankruptcy will not cancel out any liability to make contributions, in the same way that a student loan liability is not cancelled by bankruptcy. This section ensures that alternative payment contributions can be dealt with outside of the consolidated fund: this requires the consent of HM Treasury in relation to England.

293 This section also amends section 46 of the 1998 Act to reflect the extent of the amended section 22 of that Act.

294 This section forms part of the law of the United Kingdom.

### Section 87: Consequential amendments

295 This section makes consequential amendments to existing legislation to take account of the new category of student support.

296 Paragraph 15 of Schedule 2 to the Commissioners for Revenue and Customs Act 2005, section 73E of the Education (Scotland) Act 1980, section 24 of the Teaching and Higher Education Act 1998 and article 5 of the Education (Student Support) (Northern Ireland) Order 1998 are amended to allow for HM Revenue and Customs to disclose information to ministers and delegated bodies in relation to alternative payments (as well as student loans as present).

297 Section 23(7)(a)(i) of the Teaching and Higher Education Act 1998 is amended to allow for the Secretary of State's functions in relation to alternative payments to be delegated, for example, to the Student Loans Company.

298 This section forms part of the law of the United Kingdom.

## Section 88: Other amendments relating to financial support

299 This section amends section 22 of the Teaching and Higher Education Act 1998.

300 Section 22 of the 1998 Act, as amended by this Act, enables the Secretary of State and Welsh Ministers to offer students grants, loans and alternative payments in connection with higher education courses which are designated by or under regulations. This section amends section 22(2) by adding a new subsection (aa) to enable such regulations to make provision designating higher education courses by reference to matters determined or published by OfS or other persons. The purpose of this provision is to enable regulations under section 22(1) to refer to, for example, different categories of the OfS register, and the list published by the OfS under section 18.

301 Section 22(2)(b) of the 1998 Act permits regulations to be made prescribing, in relation to any grant, loan and, as amended by this Act, alternative payment, the maximum amount available to any person for any particular purpose. The new section 22(2A) of the 1998 Act enables higher education regulations to make provision prescribing the maximum amount by reference to matters determined or published by the Secretary of State or other persons. This, for example, permits regulations to refer to the list published by the OfS under section 11 and the sub-level amounts determined by the Secretary of State under Schedule 2.

302 This section further amends section 22 of the 1998 Act to give the Secretary of State and Welsh Ministers a power to cancel entitlement to suspended student loans and grants. On occasion it may be necessary to suspend payments of student support in connection with higher education, if there are doubts as to whether the payments are properly due under the regulations. This provision clarifies the powers of the Secretary of State and Welsh Ministers to cancel entitlement for the period of suspension for example, if an investigation found that payments are not due.

303 This section forms part of the law of England and Wales.

## Student complaints scheme

### Section 89: Qualifying institutions for purposes of student complaints scheme

304 This section makes changes to the higher education complaints handling scheme ("the scheme") that was set up under the Higher Education Act 2004 and is operated by the Office of the Independent Adjudicator for Higher Education.

305 Subsections (1) to (3) expand the list of institutions, which are required to join the scheme to include: (a) all registered providers; (b) all institutions in England that provide courses on behalf of another institution that is a qualifying member of the scheme; and (c) all institutions that provide courses under validation arrangements with the OfS authorised by regulations made under section 51 of this Act.

306 Subsection (3) inserts section 20A (Institutions that cease to be qualifying institutions) of the 2004 Act. This provides that an institution that ceases to meet the definition of a qualifying institution is treated as if it did meet that definition for an additional period of up to 12 months. This additional period is referred to as the transitional period. Complaints only qualify for consideration under the scheme in relation to acts or omissions that occurred before the transitional period began.

307 Subsection (4) amends the definition of “institution” in section 21 of the 2004 Act so that it includes a training provider; it inserts a definition of “training provider” and it makes consequential amendments to the definition of “governing body”.

308 Subsection (5) makes consequential amendments to the definition of “qualifying institution” in section 118(1) of the Equality Act 2010 so that the time limits in that provision do not run in the period in which an institution is treated as a qualifying institution by section 20A of the 2004 Act.

309 Subsection (6) makes consequential amendments to the definition of “qualifying institution” in section 32(1) of the Counter-Terrorism Act 2015.

310 This section forms part of the law of England and Wales.

## **Deregulation of higher education corporations**

### **Section 90: Higher education corporations in England**

311 This section introduces Schedule 8, which amends provisions in the Education Reform Act 1988 and the Further and Higher Education Act 1992 relating to higher education corporations.

312 This section forms part of the law of England and Wales.

## **Part 3: Research**

### **Establishment of United Kingdom Research and Innovation**

#### **Section 91: United Kingdom Research and Innovation**

313 This section establishes a body corporate, “United Kingdom Research and Innovation” which is referenced as “UKRI”. It also gives the Welsh language name for UKRI, “Ymchwil ac Arloesedd y Deyrnas Unedig”.

314 Section 92 and Schedule 9 cover in more detail how UKRI is structured and how it will operate.

315 This section forms part of the law of the United Kingdom.

#### **Section 92: The Councils of UKRI**

316 This section establishes nine UKRI committees, which are referred to as “Councils”. These committees consist of seven research councils (subsection (1)(a) to (g)), Innovate UK (subsection (1)(h)) and the research funding functions currently exercised by HEFCE (subsection (1)(i)).

317 The Secretary of State has the power by regulation to add, omit or change the names of a Council. This power does not extend to either Innovate UK or Research England. These Regulations are subject to the affirmative resolution procedure which means that they must be passed by a vote of each House of Parliament (see section 119(2)(f)).

318 Before making these regulations, the Secretary of State must consult such persons as they consider appropriate. If requested to do so by the Secretary of State, UKRI must carry out this consultation as directed by the Secretary of State.

319 This section forms part of the law of the United Kingdom.

## Research and innovation functions and role of the Councils

### Section 93: UK research and innovation functions

- 320 This section outlines UKRI's functions in relation to science, technology, arts, humanities and new ideas. "Science" includes the social sciences and "humanities" includes the arts (see section 111(1)).
- 321 The exercise of UKRI's functions is not limited to the United Kingdom. UKRI may, when exercising its functions in subsection (1)(a) to (f), encourage and support postgraduate training in sciences, technology, humanities and new ideas.
- 322 Subsection (4) contains a definition of 'knowledge exchange', which applies to the whole of Part 3.
- 323 This section forms part of the law of the United Kingdom.

### Section 94: Financial support: supplementary provision

- 324 This section provides detail about UKRI's power to provide financial support under section 93, which includes the power to make grants, loans or other payments.
- 325 UKRI may set terms and conditions as it considers appropriate when providing financial support including repaying finance, charging interest, and placing information obligations.
- 326 UKRI has a duty to take into account the need not to discourage funding recipients from securing alternative sources of income.
- 327 This section forms part of the law of the United Kingdom.

### Section 95: Exercise of functions by science and humanities Councils

- 328 This section provides a duty for UKRI to arrange for its functions to be exercisable by the Councils listed in the table with respect to the corresponding fields of activity in the table.
- 329 In particular, UKRI may enable these Councils to exercise UKRI's power to appoint specialist employees. "Specialist employees" are researchers, scientists, and persons with knowledge, experience or specialist skills relevant to the Council's field of activity and employed by UKRI to work in this field.
- 330 In exercising functions under this section, each Council has a duty to have regard to the desirability of contributing to economic growth or economic benefit in the United Kingdom (directly or indirectly); advancing knowledge (directly or indirectly) whether in the United Kingdom or elsewhere in science, technology, humanities new ideas; and improving quality of life in the United Kingdom or elsewhere.
- 331 The Secretary of State has the power by regulations to amend the list of Councils in the table in tandem with exercising the power (under section 92) to add, omit or change the name of a Council. The Secretary of State also has the power by regulations to amend the Councils' fields of activity outlined in the second column of the table. These Regulations are subject to the affirmative resolution procedure which means that they must be passed by a vote of each House of Parliament (see section 119(2)(g)).
- 332 Before making these regulations the Secretary of State must consult such persons as considered appropriate. UKRI may carry out this consultation as directed by the Secretary of State.
- 333 This section forms part of the law of the United Kingdom.

## Section 96: Exercise of functions by Innovate UK

334 This section places a duty on UKRI to arrange for any of its functions as it may determine to be exercisable by Innovate UK for the purpose of increasing economic growth in the United Kingdom. UKRI may not, however, arrange for Innovate UK to exercise the function under section 93(1)(a) in relation to carrying out research.

335 In exercising its functions, Innovate UK has a duty to have regard to the need to support (directly or indirectly) persons engaged in business activities in the United Kingdom and the need to promote innovation by such persons. Regard must also be had to the desirability of improving quality of life in the United Kingdom.

336 This section forms part of the law of the United Kingdom.

## Section 97: Exercise of functions by Research England

337 This section places a duty on UKRI to arrange for its functions to be exercisable by Research England for the purpose of providing financial support as outlined in subsections (2) and (3).

338 Subsection (2) refers to financial support provided for the undertaking of research or knowledge exchange in relation to science, technology, humanities or new ideas, by eligible higher education providers. Financial support can also be provided for facilities and other activities associated with the research or knowledge exchange. Eligible higher education providers are defined in section 39(3). Financial support is to be provided by Research England to the governing body of the eligible education provider, and can be in respect of spending already incurred or that will be incurred in the future.

339 Subsection (3) allows Research England to provide financial support to a person or organisation for purposes associated with the undertaking of research or knowledge exchange by eligible higher education providers receiving support under subsection (2).

340 Research England may determine terms and conditions for the provision of financial support under this section. Before doing so, it has a duty to consult with persons it considers appropriate.

341 This section forms part of the law of England and Wales.

## Section 98: Exercise of functions by the Councils: supplementary

342 This section provides supplementary provisions relating to the exercise of UKRI's functions.

343 Subsection (1) provides that UKRI may arrange for a council to exercise any other function in addition to those it may exercise under sections 95, 96 or 97. This allows UKRI to enable a Council to exercise a function outside of its field of activity, for example in respect of cross-disciplinary research.

344 Subsection (2) states that a particular function of UKRI may be exercised by more than one Council.

345 Subsection (3) ensures that UKRI retains the ability to exercise any function it makes exercisable by a Council.

346 Under subsection (4), each Council (including Innovate UK and Research England) must provide UKRI with advice or information about its exercise of UKRI functions, on request from UKRI.

347 This section forms part of the law of the United Kingdom.



## Strategies and strategic delivery plans

### Section 99: UKRI's research and innovation strategy

348 The Secretary of State may request UKRI to prepare and submit a research and innovation strategy relating to the exercise of its functions over a given time period. This strategy must require each Council to submit a strategic delivery plan to UKRI, covering a defined period, to a deadline. The Secretary of State may approve the research and innovation strategy with or without changes.

349 UKRI is under a duty to publish an approved research and innovation strategy in such a manner as determined by the Secretary of State.

350 This section forms part of the law of the United Kingdom

### Section 100: Councils' strategic delivery plans

351 When UKRI publishes a strategy under section 99, it must arrange for each Council to prepare a strategic delivery plan to a deadline. These plans will be submitted to UKRI, who may approve each plan with or without changes.

352 The strategic delivery plan sets out how the Council will exercise its functions under sections 95 to 98.

353 Each Council has a duty to exercise its functions under sections 95 to 98 in accordance with its strategic delivery plan.

354 UKRI is under a duty to publish Councils' approved strategic delivery plans in such a manner as determined by the Secretary of State.

355 This section forms part of the law of the United Kingdom.

## Funding and directions

### Section 101: Grants to UKRI from the Secretary of State

356 This section provides the Secretary of State with a grant funding power in relation to UKRI. The Secretary of State can make grants with terms and conditions as the Secretary of State considers appropriate.

357 Subsections (2) and (3) place restrictions upon the terms and conditions that the Secretary of State can impose with respect to functions exercisable by Research England under section 97. Terms and conditions on grants may only be made if they constitute requirements to be met before the award of financial support and are applied to all other similar institutions. Further, grants cannot be framed by references to particular courses of study or programmes of research, or the criteria for the selection and appointment of academic staff or the admission of students. These restrictions reflect the restrictions placed upon the Secretary of State's power to set terms and conditions when providing grants to HEFCE under section 68 of the Further and Higher Education Act 1992.

358 Subsection (4) provides specific terms and conditions that, in particular, can be applied:

- a. to provide for the allocation of a grant (in whole or in part) to a Council and for changes in that allocation;
- b. to require repayment of financial support provided where terms and conditions are not followed by UKRI; and
- c. to allow interest to be charged where UKRI owes money to the Secretary of State.

359 When a grant is made to UKRI, the Secretary of State must publish the amount of the grant, any terms and conditions attached to it, and, if allocated to a specific Council, the name of the Council, and the amount that Council is to receive.

360 This section forms part of the law of the United Kingdom.

### Section 102: Secretary of State's power to give directions to UKRI

361 This section provides the Secretary of State with the power to direct UKRI in relation to the use and expenditure of money provided by the Secretary of State under section 101; UKRI must comply with such a direction. This reflects the duty on research councils to follow directions given by the Secretary of State under the Science and Technology Act 1965 and the Arts and Humanities Act 2004.

362 The section places restrictions on the Secretary of State's power to give directions with respect to Research England functions under section 97, which mirror the restrictions under section 101(2) and (3).

363 This section forms part of the law of the United Kingdom.

### Section 103: Haldane principle, balanced funding and advice from UKRI

364 This section outlines matters that the Secretary of State has a duty to consider before:

- a. making a grant under section 101; and
- b. determining terms and conditions for such a grant; and
- c. giving a direction under section 102.

365 When such a grant or direction is in respect of functions exercisable by one or more of the science and humanities Councils (see section 95), the Secretary of State must have regard to the Haldane principle. The Haldane Principle is defined as the principle that decisions on individual research proposals are best taken following an evaluation of the quality and likely impact of the proposals (such as a peer review process). The text of this definition has been adapted from the Rt Hon David Willetts' 2010 Written Ministerial Statement on the Haldane Principle, which provides further information.<sup>1</sup>

366 In any case, the Secretary of State must have regard to the balanced funding principle, and any advice provided by UKRI about the allocation of funding in relation to its functions. The balanced funding principle is defined as the principle that it is necessary to ensure that a reasonable balance is achieved in the allocation of funding between functions exercisable by the science and humanities Councils (see section 95) and functions exercisable by Research England (see section 97).

367 This section forms part of the law of the United Kingdom.

## General functions

### Section 104: General duties

368 Subsection (1) of this section states that UKRI must have regard to the need to use its resources in the most efficient, effective and economic way.

369 Subsection (2) of this section places a duty on UKRI to have regard to any guidance issued by the Secretary of State.

370 This section forms part of the law of the United Kingdom.

---

<sup>1</sup> <https://www.publications.parliament.uk/pa/cm201012/cmhansrd/cm101220/wmstext/101220m0001.htm>

## Section 105: Power to require information and advice from UKRI

371 This section places a duty on UKRI to provide information or advice in relation to its functions to the Secretary of State on request. The information and advice must be provided in the form requested by the Secretary of State.

372 This section forms part of the law of the United Kingdom.

## Section 106: Studies for improving economy, efficiency and effectiveness

373 UKRI may arrange for studies designed to improve the economy, efficiency and effectiveness of activities which UKRI funds. Recipients of funding are required to make available information, accounts and other documentation as may reasonably be required for the study. This section is similar to a power held by HEFCE.

374 This section forms part of the law of the United Kingdom.

## Section 107: Provision of research services

375 This section provides UKRI with the power to provide research services to anyone inside or outside the United Kingdom. UKRI may charge for these services and set terms and conditions as it determines.

376 Research services are defined in subsection (2).

377 This section forms part of the law of the United Kingdom.

## Section 108: Representing the United Kingdom

378 This section places a duty on UKRI to represent the United Kingdom in matters relating to international relations in any field related to its functions, if requested to do so by the Secretary of State.

379 This section forms part of the law of the United Kingdom.

## Supplementary

### Section 109: Predecessor bodies and preservation of symbolic property

380 This section revokes the Royal Charters of all current research councils established under the Science and Technology Act 1965 and the Higher Education Act 2004. This includes the seven research councils and Innovate UK. Innovate UK is a research council with the legal name "Technology Strategy Board". These eight bodies corporate cease to exist.

381 The section preserves the symbolic property of the research councils by providing that it must be transferred to UKRI as part of any property transfer scheme under Schedule 10. Symbolic property refers to the name, goodwill in the name, logo, insignia and seal of a council.

382 This section forms part of the law of the United Kingdom.

### Section 110: Amendments to powers to support research

383 This section makes amendments to the Science and Technology Act 1965 and the Higher Education Act 2004 to clarify that the powers of the Secretary of State and Ministers of the Devolved Administrations, in regard to their respective jurisdictions, have the power to fund research through grants, loans or other payments. These persons can specify terms and conditions in respect of funding, including the repayment of money, the charging of interest and a requirement on recipients of assistance to provide information that the funder requires for the exercise of its functions.

384 This section forms part of the law of the United Kingdom.

## Interpretation

### Section 111: Definitions

- 385 This section provides the definitions of certain terms, which apply to Part 3 of this Act.
- 386 This section also states that a reference to the United Kingdom in Part 3 includes a reference to any part of the United Kingdom.
- 387 This section forms part of the law of the United Kingdom.

## Part 4: General

### Section 112: Cooperation and information sharing between OfS and UKRI

- 388 This section sets out the circumstances in which the OfS and UKRI have the power to cooperate and share information.
- 389 The OfS and UKRI have a duty to cooperate where instructed to do so by the Secretary of State.
- 390 This section forms part of the law of the United Kingdom.

### Section 113: Joint working

- 391 This section gives a number of authorities the power to exercise their functions jointly where doing so would enable them to discharge their functions more efficiently or effectively. These authorities are the OfS, UKRI (but only in relation to functions exercisable by Research England), the Higher Education Funding Council for Wales, The Scottish Further and Higher Education Funding Council, the Secretary of State (to the extent that the Secretary of State is exercising functions under section 14 of the Education Act 2002), the Welsh Ministers (to the extent that they are exercising their functions under Part 2 of the Learning and Skills Act 2000), and the Department for the Economy in Northern Ireland, or the Department of Agriculture, Environment and Rural Affairs in Northern Ireland (in relation to funding higher education, or research, in Northern Ireland but only to the extent that the Department is exercising functions in connection with such funding).
- 392 This section forms part of the law of the United Kingdom.

### Section 114: Advice to Northern Ireland departments

- 393 This section gives UKRI and the OfS powers to provide advice to the Northern Ireland Executive and replicates powers set out in section 69(3) of the Further and Higher Education Act 1992.
- 394 This section forms part of the law of the United Kingdom.

### Section 115: Transfer schemes

- 395 This section introduces Schedule 10, which makes provision about schemes for the transfer of staff and property, rights and liabilities as a result of a body established by or ceasing to exist by virtue of this Act.
- 396 This section forms part of the law of the United Kingdom.

### Section 116: Power to make consequential provision etc

- 397 This section enables the Secretary of State, by regulations, to make provision which is consequential on any provision made by or under this Act. This includes power to amend, repeal, revoke or modify primary legislation, secondary legislation or, for specific purposes only, Royal Charters.

398 Subsection (3) allows the Secretary of State to make provision in relation to Royal Charters for the purposes of degree awarding powers and “university” title only. Subsection (4) provides that the Secretary of State cannot, under section 116, revoke a Royal Charter in its entirety.

399 This section forms part of the law of the United Kingdom.

### Section 117: Transitional, transitory or saving provision

400 This section enables transitional, transitory or saving provisions in connection with the coming into force of any provision of this Act to be made by regulations.

401 This section forms part of the law of the United Kingdom.

### Section 118: Pre-commencement consultation

402 This section provides for the OfS or UKRI to rely on a consultation carried out by others before the coming into force of the relevant power or duty under this Act to carry out that consultation.

403 Where the OfS would have a power or duty to carry out such consultation, provision is made for it to be carried out by the Secretary of State, the DFA or HEFCE, or any of them acting jointly. When doing so, provision is also made for the Secretary of State, the DFA or HEFCE to consult English higher education providers before any such providers have been registered.

404 Where UKRI would have a power or duty to carry out such consultation, provision is made for it to be carried out by either the Secretary of State or HEFCE or both of them jointly.

405 This section forms part of the law of the United Kingdom.

### Section 119: Regulations

406 This section sets out the parliamentary procedures to which the various delegated legislative powers under this Act are subject. It also sets out the different types of provision that regulations may make, including different provision for different purposes, cases or areas, and incidental, consequential, supplementary, transitional, transitory or saving provision.

407 This section forms part of the law of the United Kingdom.

### Section 120: Directions

408 This section provides that any power to give directions under this Act includes a power to vary or revoke such directions.

409 This section forms part of the law of the United Kingdom.

### Section 121: General interpretation

410 This section defines certain terms used in this Act.

411 This section forms part of the law of the United Kingdom.

### Section 122: Minor and consequential amendments

412 This section introduces Schedules 11 and 12, which make minor and consequential changes relating to Parts 1 and 3 respectively.

413 This section forms part of the law of the United Kingdom.

### Section 123: Extent

414 See commentary on sections and Annex A below.

415 This section forms part of the law of the United Kingdom.

## Section 124: Commencement

416 This section makes provision about the coming into force of the provisions of this Act.

417 This section forms part of the law of the United Kingdom.

## Section 125: Short title

418 This section sets out the short title of this Act and that this Act is to be included in the list of Education Acts set out in section 578 of the Education Act 1996.

419 This section forms part of the law of the United Kingdom.

# Schedules

## Schedule 1: The Office for Students

420 Paragraph 1 states that the OfS is separate and distinct from, and is not working on behalf of, the Crown. It also provides that property of the OfS does not belong to, nor is being held by the OfS on behalf of, the Crown.

421 Paragraph 2(1) states that the members of the OfS are a chair, the Chief Executive Officer, the Director for Fair Access and Participation, and between seven and 12 other members, referred to as ordinary members. These members are appointed by the Secretary of State.

422 Paragraph 2(2) sets out the Secretary of State's duty, in appointing the chair and ordinary members of the OfS, to have regard to the desirability of their having a range of experience. At least one member of the OfS must have experience of representing or promoting the interests of individual students or students generally. Civil servants may not be appointed as members of the OfS.

423 Paragraph 3 provides that the Director for Fair Access and Participation is responsible for overseeing the performances of the OfS's access and participation functions, performing any such functions (or any other functions) which are delegated to that Director, and reporting to the other members of the OfS on the performance of those functions. The Director may also report to the other members on measures taken to comply with the OfS's duty under section 2(1)(d) to have regard to the need to promote equality of opportunity etc.

424 Paragraphs 4 and 5 explain how terms and conditions of appointment for members are set and enables the Secretary of State to remove a member on specified grounds.

425 Paragraph 6 places a duty on the OfS to pay salaries, pensions, allowances, expenses or gratuities to OfS members as determined by the Secretary of State. It also provides that if someone ceases to be a member of the OfS, the OfS must pay any compensation determined by the Secretary of State.

426 Paragraph 7 empowers the OfS to appoint and pay staff, determining their pay, terms and conditions, allowances, expenses, pensions and gratuities, subject to the approval of the Secretary of State. Provision is also made for payments to former employees by the OfS with the approval of the Secretary of State. The OfS is a body in Schedule 1 to the Superannuation Act 1972 and must pay the Minister for the Civil Service for any increase in sums provided by Parliament which are attributable to its inclusion in that Act.

427 Paragraph 8 gives the OfS powers to establish committees and subcommittees and sets conditions for appointing committee members, paying allowances and reviewing the structure and activities of the committees and subcommittees.

- 428 Paragraph 9 states that the OfS may determine its own procedures and the procedures of any of its committees. The quorum for a meeting of the OfS is half the number of its members. The Secretary of State (or a representative) is entitled to attend any meeting of the OfS or its committees. The Secretary of State or representative must, on request, be provided with papers and be able to participate in those meetings. However, the Secretary of State (or representative) may not be involved in decision-making at those meetings.
- 429 Paragraph 10 states that the proceedings of the OfS or any of its committees are not rendered invalid by a vacancy or defective appointment.
- 430 Paragraph 11 enables the OfS to delegate functions, as it determines, to individual members of the OfS, OfS employees or committees. But access and participation functions may be delegated only to the Director for Fair Access and Participation.
- 431 Paragraph 12(1) requires the OfS to maintain a record of its financial accounts and clear records of the information that underpins them. It also requires that the OfS sets out an annual statement of its accounts for each financial year.
- 432 Paragraph 12(2) requires that the OfS's annual statement of accounts should adhere to instructions provided to it by the Secretary of State and HM Treasury. Instructions may relate to the content and form of the annual statement, the methodology, and any extra information that it has been deemed necessary to provide to Parliament.
- 433 Paragraph 12(3) requires the OfS to send a copy of the annual financial statement to the Secretary of State and the Comptroller and Auditor General – the head of the National Audit Office, which is the organisation that scrutinises the spending of public bodies – before the end of August that follows the financial year to which the financial statement relates.
- 434 Paragraph 12(4) requires the Comptroller and Auditor General to scrutinise the OfS's statement of accounts, to certify it and report on it. This report and a certified statement must be sent to the Secretary of State.
- 435 Paragraph 12(5) requires the Secretary of State to provide a copy of the Comptroller and Auditor's report on the OfS's statement of accounts and certified statement to Parliament.
- 436 Paragraph 12(6) defines the first financial year as the period of time from the date that the OfS is set up to the second 31 March following that date. Each subsequent period of 12 months from that point on constitutes a new financial year.
- 437 Paragraph 13 deals with the annual report. The OfS must produce a report that covers the period of a financial year and which provides a commentary on its functions during that period. The report must include a statement on how the OfS has cooperated with UKRI during that financial year. The report must include the annual statement of accounts referred to in paragraph 12(1). If, for any reason, the OfS does not delegate all of the access and participation functions to the Director for Fair Access and Participation during a financial year, then the OfS must report this and set out the period or periods of time during which the access and participation functions were not delegated to the Director and the reasons why these functions were not delegated. The OfS must produce the annual report as soon as possible after the end of the financial year to which it relates. The OfS must send the report to the Secretary of State who must lay it before Parliament.
- 438 Paragraph 14 sets out that on those occasions where the OfS's seal is being applied, this needs to have been authorised by the signature of the chair of the OfS or of another authorised person and one other member. A document executed in this manner is to be received as evidence and taken as executed unless the contrary is shown.

- 439 Paragraph 15 relates to the supplementary powers of the OfS. The OfS may do anything necessary or expedient in relation to its functions. The OfS may, in particular, acquire and dispose of land and property, enter into contracts and accept gifts or money, land and other property. This list is non exhaustive.
- 440 Paragraph 16 inserts 'Office for Students' into Part 2 of the Table in paragraph 3 of Schedule 1 to the Public Records Act 1958. Any records produced by the OfS are treated as public records and are subject to the restrictions and principles governing public records.
- 441 Paragraph 17 inserts 'Office for Students' into Schedule 2 to the Parliamentary Commissioner Act 1967. This means that the OfS is a body subject to investigation by the Parliamentary Commissioner for Administration (Parliamentary Ombudsman). This body is responsible for investigating the administrative actions of central government departments and public authorities.
- 442 Paragraph 18 inserts 'The Office for Students' into Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975. That Act prohibits certain categories of people from becoming members of the House of Commons. The effect is that members of the OfS are prohibited from becoming members of the House of Commons and vice versa.
- 443 Paragraph 19 inserts 'The Office for Students' into Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975. That Act prohibits certain categories of people from becoming members of the Northern Ireland Assembly. The effect is that members of the OfS are prohibited from becoming members of the Northern Ireland Assembly and vice versa.
- 444 Paragraph 20 inserts 'The Office for Students' into Part 6 of Schedule 1 to the Freedom of Information Act 2000. This means that the OfS is a public body subject to the provisions of that Act, which sets out a framework for the public to have a right of access to information that is held by public authorities, subject to certain restrictions.
- 445 Paragraph 21 inserts 'The Office for Students' under the heading 'Other educational bodies' in Part 1 of Schedule 19 to the Equality Act 2010, thus making the OfS a body subject to the provisions of that Act.

## Schedule 2: The fee limit

- 446 Section 10 (Mandatory fee limit condition for certain providers) provides that the OfS must ensure that the ongoing registration conditions of each registered provider of a prescribed description include a fee limit condition. Schedule 2 contains provision for determining the fee limit.
- 447 Paragraph 2 makes provision for determining the fee limit where the provider has an access and participation plan approved under section 29:
- a. if the provider has a "high level quality rating" at the time when the plan is approved, the fee limit is such limit, not exceeding the higher amount, as is provided by the plan for the relevant course and the relevant academic year;
  - b. in any other case, the fee limit is such limit, not exceeding the sub-level amount, as is provided by the plan for the relevant course and for the relevant academic year.
- 448 A "high level quality rating" is a rating or ratings given in accordance with arrangements made under section 25, as the Secretary of State determines to be a high level quality rating for the purposes of paragraph 2.
- 449 The "higher amount" is an amount prescribed by regulations.



- 450 The “sub-level amount” is determined administratively by the Secretary of State. The sub-level amount must not exceed the higher amount and must be equal to or greater than a “floor amount” prescribed by regulations.
- 451 Different sub-level amounts may be determined for different descriptions of provider by reference to whether or not a provider has a rating in accordance with arrangements under section 25 and the level, type or description of that rating. However, where the sub-level amount is being set in respect of an academic year beginning before 1 August 2020, it must be equal to the higher amount for providers who have such a rating.
- 452 Different higher amounts may be prescribed for different cases or purposes, for example, for different types of teaching provision (such as accelerated courses, "sandwich" courses or part-time courses) by virtue of section 119(5). Where different higher amounts are so prescribed, there can be different sub-level and floor amounts in respect of each higher amount, and the references to the higher amount and the floor amount in paragraph 2(9) should be construed accordingly.
- 453 Paragraph 3 makes provision for determining the fee limit where the provider does not have an access and participation plan approved under section 29:
- a. if the provider has a “high level quality rating” on 1 January in the calendar year before the calendar year in which the relevant academic year begins, the fee limit is the basic amount;
  - b. in any other case, the fee limit is the sub-level amount.
- 454 The “basic amount” is an amount prescribed by regulations.
- 455 The “sub-level amount” is determined administratively by the Secretary of State. The sub-level amount must not exceed the basic amount and must be equal to or greater than a “floor amount” prescribed by regulations.
- 456 Different sub-level amounts may be determined for different descriptions of provider by reference to whether or not a provider has a rating in accordance with arrangements under section 25 and the level, type or description of that rating. However, where the sub-level amount is being set in respect of an academic year beginning before 1 August 2020, it must be equal to the basic amount for providers who have such a rating.
- 457 Different basic amounts may be prescribed for different cases or purposes, for example, for different types of teaching provision (such as accelerated courses, "sandwich" courses or part-time courses) by virtue of section 119(5). Where different basic amounts are so prescribed, there can be different sub-level and floor amounts in respect of each basic amount, and the references to the basic amount and floor amount in paragraph 3(8) should be construed accordingly.
- 458 Paragraph 4 relates to accelerated courses. For these purposes, an “accelerated course” is defined as a higher education course where the number of academic years applicable to the course is at least one fewer than would normally be the case for that course or a course of equivalent content leading to the grant of the same or an equivalent academic award. Paragraph 4(1) confirms that regulations under paragraph 2 or 3 may prescribe different higher, basic and floor amounts for accelerated courses.
- 459 Paragraph 5 sets out the procedures which apply in respect of fee limits. Paragraph 5(1) deals with the requirement for the Secretary of State to notify the OfS of initial and subsequent determinations of the high level quality rating and sub-level amounts, and to publish them. Paragraph 5(2) provides that regulations which increase the higher amount by an amount

greater than that required to maintain its value in real terms require a resolution of each House of Parliament. The resolution must provide that, with effect from a date specified in the resolution, the higher amount should be increased to an amount specified in the resolution, and the increase is an increase to the specified amount with effect from the specified date. This is consistent with the parliamentary procedure required in relation to above inflation increases to the higher amount under the Higher Education Act 2004.

460 Paragraph 5(3) provides that, for the purposes of paragraph 5(2)(a), the Secretary of State is to have regard to such index of prices as may be specified in regulations.

461 Any other regulations which prescribe the higher amount, the basic amount or the floor amount will be subject to the affirmative procedure (see section 119(2)).

### Schedule 3: Monetary penalties: procedure, appeals and recovery

462 This Schedule sets out the process that must be followed by the OfS in the event that it imposes a monetary penalty on a registered higher education provider.

463 The OfS must notify the provider before imposing the penalty of the amount of the penalty, why it is being imposed and of a timescale (not less than 28 days) in which the provider may make representations to the OfS.

464 The OfS is obliged to consider any such representations before making a final decision to impose any monetary penalty.

465 The OfS must inform the provider of its decision. In the event that a monetary penalty is imposed, the OfS must inform the provider of the amount of the penalty, the grounds for its imposition and how to pay or appeal against it.

466 A provider may appeal to the First-tier Tribunal against a penalty on the grounds set out in paragraph 3(2) of this Schedule. The remedies available if the appeal is successful are set out in paragraph 3(3).

467 This Schedule also sets out the consequences of late payment of a penalty and the circumstances in which the requirement to pay the penalty is suspended. Penalties recovered by the OfS and any interest must be paid to the Secretary of State.

### Schedule 4: Assessing higher education: designated body

468 Part 1 of this Schedule provides for the designation of a body suitable to perform the assessment functions defined in section 27(2). Paragraph 1 provides that the OfS may consult about whether there is a body that is suitable to perform the assessment functions and that the Secretary of State may direct the OfS to undertake such a consultation. It sets out the stakeholders who must be consulted in either instance.

469 Paragraph 2 concerns the making of a recommendation by the OfS and only applies if the OfS has consulted in line with paragraph 1. The OfS must consider whether there is a body suitable to perform the assessment functions, and if only one body is identified that body must be recommended to the Secretary of State. If more than one body is identified as suitable, the OfS will recommend whichever body it considers would be most appropriate to perform the assessment functions. If no suitable body is identified, the OfS cannot make a recommendation. The OfS must notify the Secretary of State of its decision and publish the decision.

470 Paragraph 3 provides that, where a body is recommended, the Secretary of State can only designate that body if the Secretary of State considers that the body is suitable to perform the assessment functions and that designating the body would be appropriate for securing the effective assessment of the quality of, and the standards applied to, higher education provided by English higher education providers. The Secretary of State is required to notify the body,

and publish notice of the designation, before the designation takes effect. If the Secretary of State decides not to designate the recommended body, the Secretary of State must publish the reasons for not doing so.

471 Paragraph 4 sets out the criteria that a body must meet in order to be suitable to perform the assessment functions.

472 Paragraph 5 enables the Secretary of State, by notice, to remove a designation if the Secretary of State is satisfied of certain matters or the designated body consents to the removal. The Secretary of State is required to consult specified stakeholders before removing the designation and to consider any relevant information provided by the OfS. The notice must include specified information and be published.

473 Part 2 of this Schedule provides for the oversight of the designated body by the OfS. Paragraph 8 requires the body to prepare and send to the OfS an annual report on its performance. Paragraph 9 requires the OfS to prepare and send to the Secretary of State a triennial report; it specifies the matters that the report must consider and the persons whose views must be had regard to in preparing the triennial report.

474 Paragraph 10 makes provision for the OfS to give general directions to the designated body about the performance of any of the assessment functions and the matters that the OfS must have regard to in giving such directions.

475 Paragraph 11 requires the OfS to inform the Secretary of State if it has significant concerns about how the designated body is performing its duty or the continued suitability of the body to carry out that duty.

#### Schedule 5: Powers of entry and search etc

476 This Schedule is explained in the commentary on section 56.

#### Schedule 6: English higher education information: designated body

477 Part 1 of this Schedule provides for the designation of a body suitable to perform the information functions set out in sections 64 and 65. Paragraph 1 provides that the OfS may consult about whether there is a body that is suitable to perform these functions and that the Secretary of State may direct the OfS to undertake such a consultation. It sets out the stakeholders who must be consulted in either instance.

478 Paragraph 2 concerns the making of a recommendation by the OfS and only applies if the OfS has consulted in line with paragraph 1. The OfS must consider whether there is a body suitable to perform these information functions, and if only one body is identified that body must be recommended to the Secretary of State. If more than one body is identified as suitable, the OfS will recommend whichever body it considers would be appropriate to perform these functions. If no suitable body is identified, the OfS cannot make a recommendation. The OfS must notify the Secretary of State of its decision and publish the decision.

479 Paragraph 3 provides that where a body is recommended, the Secretary of State can only designate that body if the Secretary of State considers that the body is suitable to perform these information functions. The Secretary of State is required to notify the body, and publish notice of the designation, before the designation takes effect. If the Secretary of State decides not to designate the recommended body, the Secretary of State must publish the reasons for not doing so.

480 Paragraph 4 sets out the criteria that a body must meet in order to be suitable to perform these information functions.

481 Paragraph 5 enables the Secretary of State, by notice, to remove a designation if the Secretary of State is satisfied that removal would be appropriate or the designated body consents to the removal. The Secretary of State is required to consult specified stakeholders before removing the designation and to consider any relevant information provided by the OfS. The notice must include specified information and be published.

482 Part 2 of this Schedule provides for the oversight of the designated body by the OfS. Paragraph 8 requires the body to prepare and send to the OfS an annual report on its performance. Paragraph 9 requires the OfS to prepare and send to the Secretary of State a triennial report; it specifies the matters that the report must consider and the persons whose views must be had regard to in preparing the triennial report.

483 Paragraph 10 requires the OfS to inform the Secretary of State if it has significant concerns about how the designated body is performing its duty or the continued suitability of the body to carry out that duty.

### Schedule 7: Costs recovery: procedure, appeals and recovery

484 This schedule sets out the procedure for the OfS to require a provider to pay costs relating to a sanction in accordance with section 73, the right of appeal against such a requirement, provisions relating to recovery of these costs and retention of the sums received by the OfS.

485 The OfS must notify the provider of the amount to be paid, how and when the payment must be made and rights of appeal.

486 A provider may appeal to the First-tier Tribunal against the decision that costs are payable or the amount of those costs on any of the grounds set out in paragraph 3(2) of this Schedule. The remedies available if the appeal is successful are set out in paragraph 3(3).

487 This Schedule also sets out the consequences of late payment of a penalty and the circumstances in which the requirement to pay the penalty is suspended. Costs recovered by the OfS must be paid to the Secretary of State, except to the extent that the Secretary of State, with the consent of HM Treasury, directs otherwise. The OfS must pay interest on such costs to the Secretary of State.

### Schedule 8: Higher Education Corporations in England

488 Paragraphs 1 to 22 amend the Education Reform Act 1988 in relation to the regulation of higher education corporations.

489 Paragraphs 2 to 5 relate to the incorporation of higher education corporations. Sections 122 to 123 of the 1988 Act are amended so that they only apply in relation to higher education institutions maintained by local authorities in Wales and further education corporations in Wales. Paragraph 3 inserts new section 122ZA of the 1988 Act in relation to further education corporations in England so that these institutions can reincorporate as higher education corporations through an order made by the Secretary of State.

490 Paragraph 5 makes consequential amendments to section 123 of the 1988 Act to reflect the insertion of new section 122ZA and the amendments to sections 122 and 123.

491 Paragraph 6 inserts new provisions into the 1988 Act relating to the principal and supplementary powers of higher education corporations in England.

492 Paragraph 7 amends section 124 of the 1988 Act so that this provision only applies to higher education corporations in Wales.

- 493 Paragraph 8 inserts new section 124Z of the 1988 Act, which requires higher education corporations in England to have instruments of government in place. Their content is not prescribed. Higher education corporations in England may amend, replace or revoke their instrument of government provided that in doing so they do not cease to be a charity. Paragraph 8 also inserts new section 124ZB of the 1988 Act, which makes provision about the validity of proceedings of higher education corporations in England, the application of their seal and execution of instruments by them, and requires their members to be known as the “board of governors” of the institution they conduct.
- 494 Paragraphs 9 to 11 amend sections 124A, 124B(2)(b) and 124C of the 1988 Act, so that they only to apply to higher education corporations in Wales. These provisions do not apply to higher education corporations in England, except for section 124B (other than section 124B(2)(b)) in respect of the need to keep accounts.
- 495 Paragraph 12 inserts new section 124E of the 1988 Act, which makes provision requiring higher education corporations in England to have articles of government in place. The content of articles of government is not prescribed. Higher education corporations in England may amend, replace or revoke their articles of government provided that in doing so they do not cease to be a charity.
- 496 Paragraph 13 amends section 125 of the 1988 Act so that this provision only applies to higher education corporations in Wales.
- 497 Paragraph 14 amends section 125A of the 1988 Act to ensure that the references to higher education corporations in England and Wales in that section are consistent with those used elsewhere.
- 498 Paragraph 15 amends section 127 of the 1988 Act so that it only applies in relation to higher education corporations incorporated under section 121 or 122.
- 499 Paragraph 16 inserts new section 127A of the 1988 Act, which makes provision about the dissolution of higher education corporations in England.
- 500 Paragraph 17 amends section 128 of the 1988 Act so that it only applies to higher education corporations in Wales.
- 501 Paragraph 18 amends the definition of what is deemed a ‘successor company’ to a higher education corporation for the purposes of section 129(5)(e) of the 1988 Act so that this includes any higher education corporations in England dissolved pursuant to new section 127A.
- 502 Paragraph 19 amends section 157(2)(a) of the 1988 Act so that it only applies to higher education corporations in Wales.
- 503 Paragraph 20 amends section 161(1) of the 1988 Act by inserting new definitions of higher education corporations in England and higher education corporations in Wales.
- 504 Paragraph 21 amends Schedule 7 of the 1988 Act so that it only applies to higher education corporations in Wales.
- 505 Paragraph 22 amends Schedule 7A of the 1988 Act so that it only applies to higher education corporations in Wales.
- 506 Paragraphs 23 to 26 make consequential amendments to the Further and Higher Education Act 1992.

## Schedule 9: United Kingdom Research and Innovation

- 507 Paragraph 1(1) states that UKRI is separate and distinct from, and is not working on behalf of, the Crown. Paragraph 1(2) sets out that property of UKRI does not belong to, nor is being held by UKRI on behalf of, the Crown.
- 508 Paragraphs 2(1) and (2) state that the members of UKRI are a chair, the UKRI Chief Executive Officer (“CEO”), the UKRI Chief Finance Officer (“CFO”) and between nine and 12 other members. These members are appointed by the Secretary of State.
- 509 Paragraphs 2(3) to 2(7) deal with other aspects of the membership of UKRI. The chair cannot be either the CEO or CFO. When making these appointments, with the exception of the appointment of the UKRI chair, the Secretary of State has a duty to consult the UKRI chair.
- 510 Paragraph 2(5) sets out the Secretary of State’s duty, in appointing members of UKRI, to have regard to the desirability of there being experience of research into, or the development or exploitation of, science, technology, humanities or new ideas. The Secretary of State should also have regard to the desirability of members having experience of industrial, commercial or financial matters, the charitable sector, or the practice of any profession.
- 511 Paragraph 2(6) sets out the Secretary of State’s duty, when appointing members of UKRI, to have regard to the desirability of those members including at least one person with relevant experience in relation to at least one of Wales, Scotland and Northern Ireland.
- 512 Paragraph 2(7) defines “relevant experience” in relation to paragraph 2(6). This means experience of research into, or the development or exploitation of, science, technology, humanities or new ideas. It also includes experience of industrial, commercial or financial matters, the charitable sector, or the practice of any profession.
- 513 Paragraph 3 describes the composition of UKRI’s nine Councils and how individuals are appointed to them. Each Council is comprised of one executive chair and between five and twelve ordinary Council members. Each executive chair is appointed by the Secretary of State. The Secretary of State may also choose to appoint one ordinary Council member to each Council after consulting the UKRI chair. All other ordinary Council members are appointed by UKRI after consulting that Council’s executive chair. A majority of each Council’s ordinary members must be persons who are neither members, nor employees, of UKRI.
- 514 Paragraphs 4 and 5 relate to the terms and conditions of appointment for Ministerial appointees (UKRI members, executive chairs, and those ordinary council members appointed by the Secretary of State). The Secretary of State determines the terms and conditions of the appointment and may remove an appointee on the grounds of absence, inability, unfitness or on other grounds that the Secretary of State considers appropriate. A Ministerial appointee can resign by giving written notice to the Secretary of State.
- 515 Paragraph 6 relates to terms and conditions for ordinary council members appointed by UKRI. UKRI determines the terms and conditions of the appointment and may remove an appointee on the grounds of absence, inability, unfitness or on other grounds that it considers appropriate. A UKRI appointee can resign by giving written notice to UKRI.
- 516 Paragraph 7 places a duty on UKRI to pay salaries, pensions, allowances, compensation, expenses or gratuities to UKRI and Council members as determined by the Secretary of State. It also provides that if someone ceases to be a member of UKRI or a Council, UKRI must pay any compensation determined by the Secretary of State.
- 517 Paragraph 8 empowers UKRI to appoint and pay staff, determining their pay, terms and conditions, allowances, expenses, pensions and gratuities, subject to the approval of the Secretary of State. Provision is also made for payments to former employees by UKRI with the

- approval of the Secretary of State. UKRI is a body in Schedule 1 to the Superannuation Act 1972 and must pay the Minister for the Civil Service for any increase in sums provided by Parliament which are attributable to its inclusion in that Act.
- 518 Paragraph 9 requires UKRI to establish an Executive Committee, to be chaired by the CEO and consisting of the CFO, executive chairs of each Council and any other employees of UKRI that the CEO may wish to appoint. The Executive Committee may establish sub-committees. UKRI is obliged to pay an allowance, as determined by the Secretary of State, to any member of an Executive sub-committee who is not a member of UKRI or its Councils or a UKRI employee.
- 519 Paragraph 10(1) gives UKRI power to establish committees in addition to the Councils and the Executive Committee. Paragraph 10(2) states that a committee under sub-paragraph (1) may establish sub-committees. A general committee (i.e. a committee or sub-committee established under sub-paragraph (1) or (2)) or Council sub-committee may include persons who are not members of UKRI, Council members or UKRI employees. UKRI must pay allowances, as determined by the Secretary of State, to a member of a general committee or a Council sub-committee who is not a member of UKRI, a Council member or an employee of UKRI.
- 520 Paragraph 10(7) places a duty on UKRI to keep under review the structure and scope of activity of the general committees. Paragraph 10(8) places a duty on the Councils to keep under review the structure and scope of activity of its Council sub-committees.
- 521 Paragraphs 11 and 12 state that that UKRI, the Councils and the Executive Committee may determine their own procedures and the procedures of their relevant sub-committees. The quorum for UKRI and Council meetings is half of its members. The Secretary of State (or a representative) is entitled to attend any meeting of UKRI, its Councils, general committee or sub-committee or Councils Sub-committee. The Secretary of State or representative must, on request, be provided with papers and be able to participate in those meetings. However, the Secretary of State (or representative) may not be involved in decision-making at those meetings.
- 522 The proceedings of UKRI, a Council, a Council sub-committee, a general committee or an Executive Committee are not rendered invalid by a vacancy or defective appointment.
- 523 Paragraph 13 enables UKRI to delegate functions, as it determines, to individual members of UKRI, UKRI employees, Councils, general committees or Council sub-committees.
- 524 Paragraph 14(1) requires UKRI to maintain a record of its financial accounts and clear records of the information that underpins them. It also requires that UKRI sets out an annual statement of its accounts for each financial year.
- 525 Paragraph 14(2) requires that UKRI's annual statement of accounts should adhere to instructions provided to it by the Secretary of State and HM Treasury. Instructions may relate to the content and form of the annual statement, the methodology, and any extra information that it has been deemed necessary to provide to Parliament.
- 526 Paragraph 14(3) requires UKRI to send a copy of the annual financial statement to the Secretary of State and the Comptroller and Auditor General – the head of the National Audit Office, which is the organisation that scrutinises the spending of public bodies – before the end of August that follows the financial year to which the financial statement relates.
- 527 Paragraph 14(4) requires the Comptroller and Auditor General to scrutinise UKRI's statement of accounts, to certify it and report on it. This report and a certified statement must be sent to the Secretary of State.
- 528 Paragraph 14(5) requires the Secretary of State to provide a copy of the Comptroller and Auditor's report on UKRI's statement of accounts and certified statement to Parliament.

- 529 Paragraph 14(6) defines the first financial year as the period of time from the date that the UKRI is set up to the second 31 March following that date. Each subsequent period of 12 months from that point on constitutes a new financial year.
- 530 Paragraph 15 deals with the annual report. UKRI must produce a report that covers the period of a financial year and which provides a commentary on its functions during that period. The report must include a statement on how UKRI has cooperated with the Office for Students during that financial year. The report must include the annual statement of accounts referred to in paragraph 14(1). UKRI must produce the annual report as soon as possible after the end of the financial year to which it relates. UKRI must send the report to the Secretary of State who must lay it before Parliament.
- 531 Paragraph 16 sets out that on those occasions where UKRI's seal is being applied, this needs to have been authorised by the signature of a member of UKRI or of another person authorised by UKRI. A document executed in this manner is to be received as evidence and taken as executed unless the contrary is shown. But this provision does not apply if the document being executed is being signed under Scottish law.
- 532 Paragraph 17 relates to the supplementary powers of UKRI. UKRI may do anything necessary or expedient in relation to its functions. UKRI may, in particular, acquire and dispose of land and property, enter into contracts and accept gifts or money, land and other property. This list is non exhaustive. Paragraph 17(3) requires UKRI to seek permission from the Secretary of State to undertake specified activities in accordance with terms and conditions periodically specified by the Secretary of State.
- 533 Paragraph 18 inserts UKRI into Part 2 of the Table in paragraph 3 of Schedule 1 to the Public Records Act 1958. Any records produced by UKRI are treated as public records and are subject to the restrictions and principles governing public records.
- 534 Paragraph 19 inserts UKRI into Schedule 2 to the Parliamentary Commissioner Act 1967. This means that UKRI is a body subject to investigation by the Parliamentary Commissioner for Administration (Parliamentary Ombudsman). This body is responsible for investigating the administrative actions of central government departments and public authorities.
- 535 Paragraph 20 inserts UKRI into Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975. That Act prohibits certain categories of people from becoming members of the House of Commons. The effect is that members of UKRI, members of Councils, and members of committees and sub-committees are prohibited from becoming members of the House of Commons and vice versa.
- 536 Paragraph 21 inserts UKRI into Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975. That Act prohibits certain categories of people from becoming members of the Northern Ireland Assembly. The effect is that members of UKRI, members of Councils, and members of committees and sub-committees are prohibited from becoming members of the Northern Ireland Assembly and vice versa.
- 537 Paragraph 22 inserts UKRI into Part 6 of Schedule 1 to the Freedom of Information Act 2000. This means that UKRI is a public body subject to the provisions of that Act. That Act sets out a framework for the public to have a right of access to information that is held by public authorities, subject to certain restrictions.
- 538 Paragraph 23 inserts UKRI under the heading 'Other educational bodies' in Part 1 of Schedule 19 to the Equality Act 2010, thus making UKRI a body subject to the provisions of that Act.



## Schedule 10: Transfer schemes

539 This Schedule gives the Secretary of State powers to make property transfer schemes and staff transfer schemes in connection with the establishment of the OfS or UKRI, or HEFCE, the office of Director of Fair Access to Higher Education and the research councils ceasing to exist by virtue of this Act. Permitted transferees under transfer schemes would be the OfS, UKRI, the Secretary of State or another person specified in the scheme. Permitted transferors would be the Secretary of State, HEFCE, the Director of Fair Access to Higher Education or the research councils.

540 Staff transfer schemes may make provision which is the same as or similar to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE Regulations).

## Schedule 11: Minor and consequential amendments relating to Part 1

541 This Schedule sets out changes to other legislation in consequence of Part 1 of this Act.

542 These include amendments in consequence of the HEFCE and the office of Director of Fair Access to Higher Education ceasing to exist. They also include amendments to the Education (No. 2) Act 1986 relating to freedom of speech, and amendments to the Freedom of Information Act 2000 regarding public authorities to which that Act applies.

## Schedule 12: Minor and consequential amendments relating to Part 3

543 This Schedule sets out the changes to other legislation in consequence of Part 3 of this Act.

## Commencement

544 Section 124 makes provision about the coming into force of the provisions of this Act.

## Related documents

545 The following documents are relevant to the Act and can be read at the stated locations:

- Delegated Powers Memorandum - <http://www.parliament.uk/documents/lords-committees/delegated-powers/Higher-Education-and-Research-Bill-DPM.pdf>
- Human Rights Act 1998 - [www.legislation.gov.uk/ukpga/1998/42](http://www.legislation.gov.uk/ukpga/1998/42)
- Higher Education Act 2004 - [www.legislation.gov.uk/ukpga/2004/8](http://www.legislation.gov.uk/ukpga/2004/8)
- Teaching and Higher Education Act 1998 - [www.legislation.gov.uk/ukpga/1998/30](http://www.legislation.gov.uk/ukpga/1998/30)
- Further and Higher Education Act 1992 - [www.legislation.gov.uk/ukpga/1992/13](http://www.legislation.gov.uk/ukpga/1992/13)
- Science and Technology Act 1965 - [www.legislation.gov.uk/ukpga/1965/4](http://www.legislation.gov.uk/ukpga/1965/4)

## Annex A - Territorial extent and application

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?
Part 1: The Office for Students				
Sections 1-24	Yes	No	No	No
Section 25	Yes	Yes	Yes	Yes
Sections 26-78	Yes	No	No	No
Sections 79-80	Yes	Yes	Yes	Yes
Sections 81-82	Yes	No	No	No
Section 83	Yes	In part	In part	In part
Sections 84-85	Yes	No	No	No
Part 2: Other Education Measures				
Section 86-88	Yes	Yes	No	No
Section 89	Yes	In part	No	No
Section 90	Yes	No	No	No
Part 3: Research				
Sections 91-96	Yes	Yes	Yes	Yes
Section 97	Yes	No	No	No
Sections 98-111	Yes	Yes	Yes	Yes
Part 4: General				
Sections 112-125	Yes	Yes	Yes	Yes
Schedules				
Schedules 1-8	Yes	No	No	No
Schedules 9-10	Yes	Yes	Yes	Yes
Schedules 11-12	Yes	In part	In part	In part

*These Explanatory Notes relate to the Higher Education and Research Act 2017 (c. 29) which received Royal Assent on 27 April 2017*

## Annex B - Hansard References

546 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard reference
<b>House of Commons</b>		
Introduction	19 May 2016	<a href="#">Vol 611 Col 163-164</a>
Second Reading	19 July 2016	<a href="#">Vol 613 Col 703-795</a>
Public Bill Committee	6 September 2016	<a href="#">First Sitting: Col 1-34</a> <a href="#">Second Sitting: Col 35-74</a>
	8 September 2016	<a href="#">Third Sitting: Col 75-104</a> <a href="#">Fourth Sitting: Col 105-148</a>
	13 September 2016	<a href="#">Fifth Sitting: Col 149-182</a> <a href="#">Sixth Sitting: Col 183-240</a>
	15 September 2016	<a href="#">Seventh Sitting: Col 241-266</a> <a href="#">Eighth Sitting: Col 267-310</a>
	11 October 2016	<a href="#">Ninth Sitting: Col 311-344</a> <a href="#">Tenth Sitting: Col 345-414</a>
	13 October 2016	<a href="#">Eleventh Sitting: Col 415-442</a> <a href="#">Twelfth Sitting: Col 443-485</a>
	18 October 2016	<a href="#">Thirteenth Sitting: Col 487-518</a> <a href="#">Fourteenth Sitting: Col 519-576</a>
Report and Third Reading	21 November 2016	<a href="#">Vol 617 Col 616-720</a>
<b>House of Lords</b>		
Introduction	22 November 2016	No debate
Second Reading	6 December 2016	<a href="#">Vol 777 Col 611-726</a>
Committee	9 January 2017	<a href="#">Vol 777 Col 1737-1778</a> <a href="#">Vol 777 Col 1796-1819</a> <a href="#">Vol 777 Col 1837-1852</a>
	11 January 2017	<a href="#">Vol 777 Col 1958-2019</a> <a href="#">Vol 777 Col 2036-2058</a>
	16 January 2017	<a href="#">Vol 778 Col 17-83</a> <a href="#">Vol 778 Col 97-104</a>
	18 January 2017	<a href="#">Vol 778 Col 251-282</a> <a href="#">Vol 778 Col 298-326</a>
	23 January 2017	<a href="#">Vol 778 Col 432-460</a> <a href="#">Vol 778 Col 476-502</a> <a href="#">Vol 778 Col 517-546</a>

*These Explanatory Notes relate to the Higher Education and Research Act 2017 (c. 29) which received Royal Assent on 27 April 2017*

<b>Stage</b>	<b>Date</b>	<b>Hansard reference</b>
	25 January 2017	<a href="#">Vol 778 Col 668-774</a>
	30 January 2017	<a href="#">Vol 778 Col 979-1028</a>
Report	6 March 2017	<a href="#">Vol 779 Col 1098-1145</a> <a href="#">Vol 779 Col 1158-1175</a> <a href="#">Vol 779 Col 1189-1202</a>
	8 March 2017	<a href="#">Vol 779 Col 1362-1427</a> <a href="#">Vol 779 Col 1444-1464</a>
	13 March 2017	<a href="#">Vol 779 Col 1636-1708</a>
	15 March 2017	<a href="#">Vol 779 Col 1908-1948</a>
Third Reading	4 April 2017	<a href="#">Vol 782 Col 998 - 1012</a>
Commons Consideration of Lords Amendments	26 April 2017	<a href="#">Vol 624 Col 1158-1185</a>
Lords Consideration of Lords Amendments	27 April 2017	<a href="#">Vol 782 Col 1447- 1486</a>
Royal Assent	27 April 2017	<a href="#">Vol 782 Col 1528</a>

*These Explanatory Notes relate to the Higher Education and Research Act 2017 (c. 29) which received Royal Assent on 27 April 2017*

## Annex C - Progress of Act Table

547 This Annex shows how each section and Schedule of the Act was numbered during the passage of the Act through Parliament.

Section of the Act	Bill as introduced in the Commons	Bill as amended in Committee in the Commons	Bill as introduced in the Lords	Bill as amended in the Committee in the Lords	Bill as amended on Report in the Lords
				Clause 1	Clause 1
Section 1	Clause 1	Clause 1	Clause 1	Clause 2	Clause 2
Section 2	Clause 2	Clause 2	Clause 2	Clause 3	Clause 3
Section 3	Clause 3	Clause 3	Clause 3	Clause 4	Clause 4
Section 4	Clause 4	Clause 4	Clause 4	Clause 5	Clause 5
Section 5	Clause 5	Clause 5	Clause 5	Clause 6	Clause 6
Section 6	Clause 6	Clause 6	Clause 6	Clause 7	Clause 7
Section 7	Clause 7	Clause 7	Clause 7	Clause 8	Clause 8
Section 8	Clause 8	Clause 8	Clause 8	Clause 9	Clause 9
Section 9	Clause 9	Clause 9	Clause 9	Clause 10	Clause 10
Section 10	Clause 10	Clause 10	Clause 10	Clause 11	Clause 11
					Clause 12
Section 11	Clause 11	Clause 11	Clause 11	Clause 12	Clause 13
Section 12	Clause 12	Clause 12	Clause 12	Clause 13	Clause 14
Section 13	Clause 13	Clause 13	Clause 13	Clause 14	Clause 15
Section 14	Clause 14	Clause 14	Clause 14	Clause 15	Clause 16
Section 15	Clause 15	Clause 15	Clause 15	Clause 16	Clause 17
Section 16	Clause 16	Clause 16	Clause 16	Clause 17	Clause 18
Section 17	Clause 17	Clause 17	Clause 17	Clause 18	Clause 19
Section 18	Clause 18	Clause 18	Clause 18	Clause 19	Clause 20
Section 19	Clause 19	Clause 19	Clause 19	Clause 20	Clause 21
Section 20	Clause 20	Clause 20	Clause 20	Clause 21	Clause 22
Section 21	Clause 21	Clause 21	Clause 21	Clause 22	Clause 23
Section 22	Clause 22	Clause 22	Clause 22	Clause 23	Clause 24
Section 23	Clause 23	Clause 23	Clause 23	Clause 24	Clause 25
Section 24	Clause 24	Clause 24	Clause 24	Clause 25	Clause 26
Section 25	Clause 25	Clause 25	Clause 25	Clause 26	
					Clause 27
Section 26					

*These Explanatory Notes relate to the Higher Education and Research Act 2017 (c. 29) which received Royal Assent on 27 April 2017*

Section 27	Clause 26	Clause 26	Clause 26	Clause 27	Clause 28
Section 28	Clause 27	Clause 27	Clause 27	Clause 28	Clause 29
Section 29	Clause 28	Clause 28	Clause 28	Clause 29	Clause 30
Section 30	Clause 29	Clause 29	Clause 29	Clause 30	Clause 31
Section 31	Clause 30	Clause 30	Clause 30	Clause 31	Clause 32
Section 32	Clause 31	Clause 31	Clause 31	Clause 32	Clause 33
Section 33	Clause 32	Clause 32	Clause 32	Clause 33	Clause 34
Section 34	Clause 33	Clause 33	Clause 33	Clause 34	Clause 35
Section 35	Clause 34	Clause 34	Clause 34	Clause 35	Clause 36
Section 36	Clause 35	Clause 35	Clause 35	Clause 36	Clause 37
Section 37	Clause 36	Clause 36	Clause 36	Clause 37	Clause 38
Section 38					Clause 39
Section 39	Clause 37	Clause 37	Clause 37	Clause 38	Clause 40
Section 40	Clause 38	Clause 38	Clause 38	Clause 39	Clause 41
Section 41	Clause 39	Clause 39	Clause 39	Clause 40	Clause 42
Section 42	Clause 40	Clause 40	Clause 40	Clause 41	Clause 43
Section 43	Clause 41	Clause 41	Clause 41	Clause 42	Clause 44
Section 44	Clause 42	Clause 42	Clause 42	Clause 43	Clause 45
Section 45	Clause 43	Clause 43	Clause 43	Clause 44	Clause 46
					Clause 47
Section 46					
Section 47					
Section 48	Clause 44	Clause 44	Clause 44	Clause 45	Clause 48
Section 49	Clause 45	Clause 45	Clause 45	Clause 46	Clause 49
Section 50	Clause 46	Clause 46	Clause 46	Clause 47	Clause 50
Section 51	Clause 47	Clause 47	Clause 47	Clause 48	Clause 51
Section 52	Clause 48	Clause 48	Clause 48	Clause 49	Clause 52
Section 53	Clause 49	Clause 49	Clause 49	Clause 50	Clause 53
Section 54	Clause 50	Clause 50	Clause 50	Clause 51	Clause 54
Section 55					Clause 55
Section 56	Clause 51	Clause 51	Clause 51	Clause 52	Clause 56
Section 57	Clause 52	Clause 52	Clause 52	Clause 53	Clause 57
Section 58	Clause 53	Clause 53	Clause 53	Clause 54	Clause 58
Section 59	Clause 54	Clause 54	Clause 54	Clause 55	Clause 59
Section 60	Clause 55	Clause 55	Clause 55	Clause 56	Clause 60
Section 61	Clause 56	Clause 56	Clause 56	Clause 57	Clause 61

*These Explanatory Notes relate to the Higher Education and Research Act 2017 (c. 29) which received Royal Assent on 27 April 2017*

Section 62	Clause 57	Clause 57	Clause 57	Clause 58	Clause 62
Section 63	Clause 58	Clause 58	Clause 58	Clause 59	Clause 63
Section 64				Clause 60	Clause 64
Section 65	Clause 59	Clause 59	Clause 59	Clause 61	Clause 65
Section 66	Clause 60	Clause 60	Clause 60	Clause 62	Clause 66
Section 67	Clause 61	Clause 61	Clause 61	Clause 63	Clause 67
Section 68			Clause 62	Clause 64	Clause 68
Section 69	Clause 62	Clause 62	Clause 63	Clause 65	Clause 69
Section 70	Clause 63	Clause 63	Clause 64	Clause 66	Clause 70
Section 71	Clause 64	Clause 64	Clause 65	Clause 67	Clause 71
Section 72		Clause 65	Clause 66	Clause 68	Clause 72
Section 73	Clause 65	Clause 66	Clause 67	Clause 69	Clause 73
Section 74	Clause 66	Clause 67	Clause 68	Clause 70	Clause 74
Section 75	Clause 67	Clause 68	Clause 69	Clause 71	Clause 75
Section 76	Clause 68	Clause 69	Clause 70	Clause 72	Clause 76
Section 77	Clause 69	Clause 70	Clause 71	Clause 73	Clause 77
Section 78	Clause 70	Clause 71	Clause 72	Clause 74	Clause 78
Section 79	Clause 71	Clause 72	Clause 73	Clause 75	Clause 79
Section 80	Clause 72	Clause 73	Clause 74	Clause 76	Clause 80
Section 81	Clause 73	Clause 74	Clause 75	Clause 77	Clause 81
Section 82	Clause 74	Clause 75	Clause 76	Clause 78	Clause 82
Section 83	Clause 75	Clause 76	Clause 77	Clause 79	Clause 83
Section 84	Clause 76	Clause 77	Clause 78	Clause 80	Clause 84
Section 85	Clause 77	Clause 78	Clause 79	Clause 81	Clause 85
Section 86	Clause 78	Clause 79	Clause 80	Clause 82	Clause 86
Section 87	Clause 79	Clause 80	Clause 81	Clause 83	Clause 87
Section 88	Clause 80	Clause 80	Clause 82	Clause 84	Clause 88
Section 89	Clause 81	Clause 81	Clause 83	Clause 85	Clause 89
					Clause 90
Section 90	Clause 82	Clause 83	Clause 84	Clause 86	Clause 91
Section 91	Clause 83	Clause 84	Clause 85	Clause 87	Clause 92
Section 92	Clause 84	Clause 85	Clause 86	Clause 88	Clause 93
Section 93	Clause 85	Clause 86	Clause 87	Clause 89	Clause 94
Section 94	Clause 86	Clause 87	Clause 88	Clause 90	Clause 95
Section 95	Clause 87	Clause 88	Clause 89	Clause 91	Clause 96
Section 96	Clause 88	Clause 89	Clause 90	Clause 92	Clause 97

*These Explanatory Notes relate to the Higher Education and Research Act 2017 (c. 29) which received Royal Assent on 27 April 2017*



Section 97	Clause 89	Clause 90	Clause 91	Clause 93	Clause 98
Section 98	Clause 90	Clause 91	Clause 92	Clause 94	Clause 99
Section 99	Clause 91	Clause 92	Clause 93	Clause 95	Clause 100
Section 100	Clause 92	Clause 93	Clause 94	Clause 96	Clause 101
Section 101	Clause 93	Clause 94	Clause 95	Clause 97	Clause 102
Section 102	Clause 94	Clause 95	Clause 96	Clause 98	Clause 103
Section 103	Clause 95	Clause 96	Clause 97	Clause 99	Clause 104
Section 104	Clause 96	Clause 97	Clause 98	Clause 100	Clause 105
Section 105	Clause 97	Clause 98	Clause 99	Clause 101	Clause 106
Section 106	Clause 98	Clause 99	Clause 100	Clause 102	Clause 107
Section 107	Clause 99	Clause 100	Clause 101	Clause 103	Clause 108
Section 108	Clause 100	Clause 101	Clause 102	Clause 104	Clause 109
Section 109	Clause 101	Clause 102	Clause 103	Clause 105	Clause 110
Section 110		Clause 103	Clause 104	Clause 106	Clause 111
Section 111	Clause 102	Clause 104	Clause 105	Clause 107	Clause 112
Section 112	Clause 103	Clause 105	Clause 106	Clause 108	Clause 113
Section 113		Clause 106	Clause 107	Clause 109	Clause 114
Section 114		Clause 107	Clause 108	Clause 110	Clause 115
Section 115	Clause 104	Clause 108	Clause 109	Clause 111	Clause 116
Section 116	Clause 105	Clause 109	Clause 110	Clause 112	Clause 117
Section 117	Clause 106	Clause 110	Clause 111	Clause 113	Clause 118
Section 118		Clause 111	Clause 112	Clause 114	Clause 119
Section 119	Clause 107	Clause 112	Clause 113	Clause 115	Clause 120
Section 120	Clause 108	Clause 113	Clause 114	Clause 116	Clause 121
Section 121	Clause 109	Clause 114	Clause 115	Clause 117	Clause 122
Section 122	Clause 110	Clause 115	Clause 116	Clause 118	Clause 123
Section 123	Clause 111	Clause 116	Clause 117	Clause 119	Clause 124
Section 124	Clause 112	Clause 117	Clause 118	Clause 120	Clause 125
Section 125	Clause 113	Clause 118	Clause 119	Clause 121	Clause 126
Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1
Schedule 2	Schedule 2	Schedule 2	Schedule 2	Schedule 2	Schedule 2
Schedule 3	Schedule 3	Schedule 3	Schedule 3	Schedule 3	Schedule 3
Schedule 4	Schedule 4	Schedule 4	Schedule 4	Schedule 4	Schedule 4
Schedule 5	Schedule 5	Schedule 5	Schedule 5	Schedule 5	Schedule 5
Schedule 6	Schedule 6	Schedule 6	Schedule 6	Schedule 6	Schedule 6
Schedule 7	Schedule 7	Schedule 7	Schedule 7	Schedule 7	Schedule 7

*These Explanatory Notes relate to the Higher Education and Research Act 2017 (c. 29) which received Royal Assent on 27 April 2017*

Schedule 8	Schedule 8	Schedule 8	Schedule 8	Schedule 8	Schedule 8
Schedule 9	Schedule 9	Schedule 9	Schedule 9	Schedule 9	Schedule 9
Schedule 10	Schedule 10	Schedule 10	Schedule 10	Schedule 10	Schedule 10
Schedule 11	Schedule 11	Schedule 11	Schedule 11	Schedule 11	Schedule 11
Schedule 12	Schedule 12	Schedule 12	Schedule 12	Schedule 12	Schedule 12

© Crown copyright 2017

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.





Published by TSO (The Stationery Office), part of Williams Lea Tag, and available from:

**Online**

[www.tsoshop.co.uk](http://www.tsoshop.co.uk)

**Mail, Telephone, Fax & E-mail**

TSO

PO Box 29, Norwich, NR3 1GN

Telephone orders/General enquiries: 0333 202 5070

Fax orders: 0333 202 5080

E-mail: [customer.services@tso.co.uk](mailto:customer.services@tso.co.uk)

Textphone: 0333 202 5077

**TSO@Blackwell and other Accredited Agents**

ISBN 978-0-10-560068-8



9 780105 600688