Designation of a body to perform the assessment functions for higher education in England

Invitation of expressions of interest & information on the process

Launch date August 2017

Respond by 19 September 2017
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Introduction

The Higher Education and Research Act 2017 (‘the Act’) establishes the Office for Students (OfS) as the new regulator for higher education in England. It enables the OfS to recommend to the Secretary of State a body to be designated to perform assessment functions for higher education in England. This body will be referred to in this document as the designated quality body. Designation requires the body to perform certain functions specified in the Act and to charge appropriate fees. This document invites expressions of interest from bodies wishing to be considered for designation as the quality body. It sets out the designation process and explains the designation conditions set out in Act.

The first step in the formal designation process is a consultation of the HE sector. This is being led by the Department for Education before the OfS is established. The consultation will provide evidence to assist the OfS to recommend a suitable body for designation after it is established. If the OfS considers that there is a body that is suitable for designation, the OfS must recommend it for designation to the Secretary of State, who has the power to designate the body under the Act.
Background

The Higher Education and Research Act 2017

The Act received Royal Assent in April 2017. It contains a range of measures to increase competition and choice in the higher education sector in England. It also includes changes to raise standards and to strengthen the United Kingdom’s capabilities in research and innovation.

The Act establishes the OfS as a new student-focussed market regulator for higher education in England. The OfS will operate on behalf of students and taxpayers. It will support a competitive environment promoting choice, quality and value for money. It will create a level playing field, streamlining regulation of all providers under one body and providing a clear set of conditions for each type of registered higher education provider.

The OfS will also operate the Teaching Excellence Framework, which recognises and rewards high quality teaching in order to drive up quality in the sector and improve student choice and graduate outcomes.

Designated quality body

The Act gives the Secretary of State powers to designate a quality body to perform the certain functions under the Act. There will be a system of coregulation between the sector and the OfS. This means that the designated quality body must maintain the confidence of both the OfS and the higher education sector.

Where the OfS decides that a higher education provider’s initial or ongoing conditions of registration must include a condition relating to the quality of, or standards applied to, the higher education provided by the provider, the function of assessing that provider’s quality and standards will be performed by the designated quality body. The designated quality body will also take on a new statutory responsibility to provide advice to the OfS on the granting, variation or revocation of degree awarding powers.
Designation process

Invitation of expressions of interest (August 2017)

The consultation process will include the outcomes from this invitation for expressions of interest. This is to give bodies who may wish to be considered for recommendation as the designated body the opportunity to set out how they meet the conditions for designation set out in the Act. It will enable respondents to comment on bodies that have submitted an expression of interest.

This expression of interest document explains the designation conditions in more detail.

We invite expressions of interest from organisations wishing to be considered for recommendation as the designated quality body.

Consultation

The Department for Education\(^1\) intends to issue a consultation document on the appointment of the designated quality body. This will provide evidence for the OfS to consider when making their recommendation to the Secretary of State on who to designate.

Our intention is that all bodies that have expressed an interest in becoming the designated body will be named in this consultation, with the submissions they provide annexed to the consultation document in order to allow consultation respondents to comment on the suitability of those organisations who express an interest against the designation conditions. It will be an open consultation, but will particularly seek responses from a broad range of higher education providers, those who represent the interests of a broad range of students and a broad range of employers of graduates. Bodies who have expressed an interest in being recommended for designation as the quality body will also have the opportunity to respond to this consultation.

The invitation to bodies to express an interest is primarily designed to enable respondents to the consultation to make a more informed response. Respondents will be free to name other bodies who have not expressed an interest, though these bodies would also need to consent to being designated in order to be considered suitable. The consultation will enable the OfS to consider if there is a body which is suitable to be recommended for designation. In particular the consultation will enable

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\(^1\) As provided for under the pre-commencement consultation provision in the Act (section 118), before the OfS is established, consultations that would ordinarily be carried out by the OfS may be undertaken by DfE, HEFCE and OFFA (or one of these or any combination of them) in its stead. The OfS may then choose to adopt the consultation or not.
the OfS to consider whether there is a body that commands the confidence of the sector, which is one of the conditions of suitability.

**Recommendation (March 2018)**

To be considered suitable for designation, an organisation must be able to meet all the designation conditions set out in the Act. The assessment will be based upon evidence from the consultation as well as any other relevant information. The OfS may request further information from the bodies in order to assess suitability.

If the OfS considers that there is more than one body that is suitable to be designated, it must recommend whichever one of those bodies it considers appropriate. If no body is considered suitable for designation, the OfS may not recommend the designation of a body. In these circumstances, the OfS would perform the assessment functions under the Act.

**Designation**

The OfS must notify the Secretary of State of its recommendation, including if it does not believe any body is suitable. The OfS will publish that notification. The Secretary of State will then make a decision on designation. If the Secretary of State decides not to designate the recommended body, the Secretary of State must publish the reasons for not doing so. It is expected that the effective date will be agreed in discussion with the successful organisation.
Designation conditions

The designation conditions are set out in paragraph 4 of Schedule 4 to the Act. This section gives further detail of how a body may be able to demonstrate that it is capable of performing its duties in an effective manner.

Details of the body’s exact role and the approach it will take to the assessment functions will be subject to agreement with the OfS, on the basis of general directions provided by the OfS. Those responding to this expression of interest should do so on the basis of their suitability to undertake all of the duties set out under the Act.

1. Capability to assess the quality of, and the standards applied to, higher education

The body must be capable of performing the assessment functions set out in the Act.

1.1 Assessment against initial registration requirements

Where the OfS decides that a higher education provider’s initial conditions of registration must include a condition relating to the quality of, or standards applied to, the higher education provided by the provider, the designated body will be required to assess the quality of and standards applied to the applicant’s higher education provision. This will then allow OfS to determine whether the provider satisfies the initial conditions of registration.

1.2 Assessment against ongoing registration requirements

The designated quality body will be required to assess the quality of, and standards applied to, the higher education of registered providers to allow OfS to determine whether the provider satisfies any ongoing registration condition relating to quality or standards. The manner in which this is to be carried out is not stipulated in the Act and it will be for the OfS to decide this, taking account of – and drawing from – the expertise provided by the designated body. We would expect the agreed approach to take account of the need for a proportional, risk-based approach that balances the burden on providers with the need to effectively identify and tackle problems where they arise.

The OfS may impose specific ongoing registration conditions that an individual provider will be required to satisfy (imposed either at the time of registration, or as a result of previous assessments) to mitigate specific risks, and the designated quality body may need to assess the quality of, and standards applied to, the higher education of such providers.
1.3 Guidance for higher education providers

We would expect the designated quality body to be able to produce guidance on the approach agreed with OfS to assess the quality of, or standards applied to, higher education for registered providers.

In your submission you should demonstrate your capability and/or experience of the production effective guidance for higher education providers.

2. Advice to the OfS on degree awarding powers

Section 46 of the Act requires the OfS to request advice from the designated quality body when the OfS is considering granting, varying or revoking degree awarding powers.

The advice provided must include the body’s view as to whether the provider has the ability to provide, and maintain the provision of, higher education of an appropriate quality, and to apply, and maintain the application of, appropriate standards to that higher education.

The Act sets out that this advice must be informed by a wide range of views. Specifically, the views of persons who (between them) have experience of the following areas, must be sought:

(a) English higher education provision (including those with and without degree awarding powers),
(b) English further education provision,
(c) Student representation,
(d) Employment of graduates,
(e) Research into science, technology, humanities or new ideas, and
(f) Encouraging competition in industry or another sector of society.

Prospective designated quality bodies should explain how they would ensure that the views of these groups would inform the required advice.

3. Sector-wide representation

The Act states that, as a condition of suitability for designation, the persons who determine the strategic priorities of the body must represent a broad range of registered higher education providers.

The Act brings all higher education providers who successfully apply to be registered under the same regulatory framework.

In your submission you should explain how the persons who determine your strategic priorities represent a broad range of English higher education providers.
4. Confidence of Higher Education providers

In order to be considered suitable the body must command the confidence of registered higher education providers.

Please set out in your expression of interest how your body would command the confidence of registered HE providers.

4.1 Confidence at the point of designation

This means that in order to be designated, the response from the sector to the consultation has to demonstrate the confidence of a broad range of registered higher education providers. We would expect bodies expressing an interest in being recommended for designation to demonstrate their ability to command the confidence of registered higher education providers and their representatives in the sector.

4.2 Maintaining confidence in the spirit of coregulation

The designated quality body must maintain the confidence of the sector and the OfS throughout the period of its designation. We would expect bodies expressing an interest in being recommended for designation to demonstrate how they would maintain the confidence of the sector. There is also a requirement in the Act for the designated quality body to exercise its functions independent of any particular Higher Education provider. Please set out in your expression of interest how you would ensure this required independence.

5. Fees

The Act enables the designated bodies to be able to charge fees for the performance of their statutory functions. The Act requires that, in any 12 month period, fees payable cannot be more than the costs incurred by the body in performing its statutory functions in that period.

The level of fees is likely to be part of an ongoing dialogue between the sector, the OfS and the designated quality body in order to ensure that, where changes to the fees structure are required all parties fully understand the reasons in advance. The body must also publish a statement of the amount of fees it charges and the basis on which they are calculated. The body must also publish revised statements when the amount of the fees or the basis on which they are calculated changes. The level of fees and the way that they are calculated will be part of the triennial review process undertaken by the OfS under paragraph 9 of Schedule 4 to the Act.

The Act does not preclude the body from charging additional fees for additional non-statutory functions that sit outside the remit of the Act if customers are prepared to
pay for such services. However, these non-statutory services remain optional for higher education providers. Where relevant, those expressing an interest should set out the mechanisms they would use to ensure proper and transparent separation of charges that relate to the cost of fulfilling its statutory duties, and charges that relate to other services.

In addition, the Act does also not preclude the organisation from bidding for contracts with other organisations. There is no need to address any non-statutory functions in your expression of interest; however, should you choose to do so (as supporting evidence of meeting any of the criteria), you should make clear that the work is non-statutory and confirm that it is optional to providers. You should also provide reassurance that this would not give rise to any conflict of interest.

6. Reporting, governance and accounting arrangements

In order to demonstrate it is capable of performing its statutory duties in an effective manner it would be expected that bodies expressing an interest in being recommended for designation would be able to demonstrate that they have robust corporate governance arrangements and accounting practices. This includes demonstrating how they comply with governance best practice, for example by having an internal audit function and separate audit committee.

The Act requires OfS to make arrangements for holding the designated body to account for the performance of the assessment functions. The designated quality body has a specific duty to prepare and send to the OfS an annual report. In addition to annual reports and any more routine reporting arrangements that are put in place, the designated quality body will be subject to scrutiny through a triennial report prepared for the Secretary of State by the OfS.
Submission of an expression of interest

To express an interest in being considered for recommendation by the OfS as the designated quality body please submit an expression of interest in no more than 3,000 words with any supporting evidence. Your submission should be strictly limited to how your organisation can meet the designation conditions set out in the Act and explained in this document.

Checklist

When drafting your expression of interest, you should cover the following:

1. Demonstrate your capability to carry out assessment of providers against initial registration requirements.
2. Demonstrate your capability to carry out assessment of providers against ongoing registration requirements.
3. Demonstrate your capability and/or experience of the production effective guidance for higher education providers.
4. Demonstrate your capability to provide advice on degree awarding powers, and in particular how you will capture the views of the persons set out in Section 2 of this document.
5. Explain how the persons who determine your strategic priorities represent a broad range of English higher education providers.
6. Demonstrate your ability to command the confidence of English higher education providers and their representatives in the sector.
7. Explain how you would maintain the confidence of the sector, and in particular set out how you would meet the requirement to be independent of any particular Higher Education provider.
8. Demonstrate how you comply with governance and accounting best practice

If you choose to make reference to additional non-statutory functions (as supporting evidence of meeting any of the criteria), you should:

- make clear that the work is non-statutory and confirm that it is optional to providers
- set out mechanisms to ensure proper and transparent separation of charges that relate to the cost of fulfilling the statutory duties from those that relate to other services.
Please submit your expression of interest preferably by email to adam.gray@education.gov.uk by 19 September 2017.

Alternatively, you can submit by post to:

Adam Gray  
Ground Floor, Higher and Further Education Directorate  
Department for Education  
Sanctuary Buildings  
20 Great Smith Street  
SW1P 3BT

By submitting this expression of interest, you are consenting to being named as a possible designated quality body in the following consultation document and are consenting for the Department for Education to publish your expression of interest as part of that consultation.

If you require copies of this document in alternative formats, please contact the above email or postal addresses.

Enquiries should be sent to adam.gray@education.gov.uk