



Designation Agreement

between the Office for Students and the
Quality Assurance Agency for Higher Education

July 2018

Original dated 4th July 2018

Updated 1st October 2019

THE OFFICE FOR STUDENTS

and

THE QUALITY ASSURANCE AGENCY FOR HIGHER EDUCATION

MEMORANDUM OF UNDERSTANDING

relating to the performance of the Assessment Functions

Table of contents

Clause heading and number

Page number

1.	DEFINITIONS AND INTERPRETATION.....	1
2.	BACKGROUND.....	3
3.	GENERAL OBLIGATIONS OF THE OFS.....	4
4.	GENERAL OBLIGATIONS OF THE QAA.....	5
5.	SPECIFIC OBLIGATIONS OF THE QAA.....	5
6.	PROVISION OF INFORMATION TO THE OFS.....	6
7.	INTELLECTUAL PROPERTY.....	7
8.	REPORTING AND MEETINGS.....	7
9.	MONITORING.....	7
10.	CONTINUOUS IMPROVEMENT.....	7
11.	AUDIT.....	7
12.	SUITABILITY TO PERFORM THE ASSESSMENT FUNCTIONS.....	8
13.	FOIA AND EIRS.....	8
14.	DATA PROTECTION.....	9
15.	CONFIDENTIALITY.....	9
16.	DISPUTE RESOLUTION.....	11
17.	NOTICES.....	11
	SIGNATURE PAGE.....	12
	SCHEDULE 1: REGULATORY PRINCIPLES.....	13
	SCHEDULE 2: DQB ACTIVITIES AND MILESTONES 1 JUNE 2019 TO 31 MARCH 2020.....	16
	SCHEDULE 3: AUTHORISED REPRESENTATIVES AND KEY PERSONNEL.....	23
	SCHEDULE 4: REPORTING REQUIREMENTS.....	24
	SCHEDULE 5: MONITORING.....	25
	SCHEDULE 6: AGREEMENT OF FUTURE ACTIVITIES AND MILESTONES.....	26

THIS MEMORANDUM OF UNDERSTANDING is made on the 4th July 2018.

BETWEEN:

- (1) **THE OFFICE FOR STUDENTS** of Nicholson House, Lime Kiln Close, Stoke Gifford, Bristol BS34 8SR
- (2) **THE QUALITY ASSURANCE AGENCY FOR HIGHER EDUCATION** of Southgate House, Southgate St, Gloucester GL1 1UB

NOW IT IS HEREBY AGREED as follows:

1. **DEFINITIONS AND INTERPRETATION**

In this Memorandum of Understanding, unless the context otherwise requires:

- 1.1 the following words and expressions have the following meanings:

Activities and Milestones: the Activities and Milestones as set out in Schedule 2 and as updated each year as set out in Schedule 6.

Annual Report: the report defined in paragraph 2.1 of Schedule 4.

Assessment Functions: the functions of the OfS under section 23 of HERA and the functions of the QAA, as the Designated Assessment Body, under section 46 of HERA;

Authorised Representatives: the persons respectively designated as such from time to time by the OfS and the QAA, the names of the first such persons being set out in Schedule 3;

Confidential Information: all confidential information (however recorded or preserved) disclosed by a party or its Representatives to the other party and that party's Representatives in connection with this Memorandum of Understanding;

Data Protection Legislation: the General Data Protection Regulation ((EU 2016/679), the Data Protection Act 2018 and any guidance or codes of practice issued by the Information Commissioner as amended or updated from time to time;

DAPs: an order made by the OfS under section 42(1) of HERA authorising a registered higher education provider to grant, as the case may be, taught awards or research awards of any description, specified taught awards or research awards or taught awards or research awards of a specified description;

Designated Assessment Body: the body designated by the Secretary of State pursuant to paragraph 3 of Schedule 4 to HERA;

Dispute Resolution Procedure: the procedure set out in clause 18;

EIRs: the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;

Fees: the fees charged by the QAA for the performance of the Assessment Functions;

FOIA: the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

Full DAPs: DAPs granted to providers that have been delivering higher education for three or more years, with a time limit of three years;

HERA: the Higher Education and Research Act 2017;

Indefinite DAPs: DAPs with no limit. An application for Indefinite DAPs may only be made on expiry of the Full DAPs;

Information: the meaning given under section 84 of FOIA;

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and related rights, moral rights, trade-marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

Key Personnel: those personnel identified Schedule 3 for the roles attributed to such personnel;

Law: any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the QAA is bound to comply;

Management Reports: the Annual Reports and Quarterly Reports;

New DAPs: DAPs granted on probationary basis to providers that have been delivering higher education for less than three years;

OfS: the Office for Students;

QAA: the Quality Assurance Agency for Higher Education;

QAA's Personnel: all employees, staff, other workers, agents and consultants of the QAA and of any Sub-Contractors who are engaged in the performance of the Assessment Functions from time to time;

Quality Code: the UK Quality Code for Higher Education published by the UK Standing Committee for Quality Assessment and QAA in March 2018;

Quarterly Report: the report defined in paragraph 3.1 of Schedule 5;

Register: the Register established and maintained by the OfS under section 3 of HERA;

Regulatory framework: the document(s) published by the OfS under section 75 of HERA;

Regulatory Principles: the regulatory principles of the OfS as enunciated in Schedule 1, as amended by the OfS from time to time;

Representatives: means, in relation to a party, its employees, officers, representatives and advisors;

Request for Information: a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs;

Specific Obligations: the obligations of the QAA set out in clause 5;

Sub-Contract: any contract between the QAA and a third party pursuant to which the third party agrees to provide services in respect of the Assessment Functions;

Sub-Contractor: the contractors or suppliers that enter into a Sub-Contract with the QAA;

Suitability Conditions: Conditions A to D as specified in paragraphs 4(2) to (5) of Schedule 4 to HERA;

Working Day: Monday to Friday, excluding any public holidays in England;

- 1.2 words and expressions defined in Part 1 of HERA have the same meanings when used in this Memorandum of Understanding;
- 1.3 references to clauses and schedules are to clauses of and schedules to this Memorandum of Understanding;
- 1.4 references to a party or parties are to a party or parties to this Memorandum of Understanding;
- 1.5 clause and schedule headings will not affect the interpretation of this Memorandum of Understanding; and
- 1.6 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and includes any subordinate legislation for the time being in force made under it.

2. **BACKGROUND**

- 2.1 On the recommendation of the OfS, the QAA has been designated by the Secretary of State pursuant to paragraph 3 of Schedule 4 to HERA as the designated assessment body to perform the Assessment Functions.
- 2.2 The OfS's recommendation that the QAA be designated was based on its assessment that: the QAA is capable of performing the Assessment Functions in an effective manner; its board represents a broad range of registered higher education providers; it commands the confidence of registered higher education providers; and it exercises its functions independently of any particular higher education provider.
- 2.3 The OfS welcomes the QAA's designation as it ensures that the QAA's expertise as the sector-recognised expert body on quality and standards can be deployed in the new regulatory environment. The QAA will perform the Assessment Functions in relation to individual providers independently of the OfS.
- 2.4 Under HERA, the performance of the Assessment Functions by the QAA is intended to serve two main purposes of the OfS.

-
- 2.5 The *first* is to enable the OfS to assess the quality of, and the standards applied to, higher education provided by English higher education providers and in particular to enable the OfS to determine whether:
- 2.5.1 providers, that have applied to be registered in the Register to be maintained by the OfS, satisfy any initial registration condition applicable to them relating to the quality of, or the standards applied to, higher education provided by them; and
 - 2.5.2 registered higher education providers satisfy any ongoing registration condition of theirs relating to the quality of, or the standards applied to, higher education provided by them.
- 2.6 The *second* is to help inform the OfS's decisions as to the authorisation, variation or revocation of DAPs by providing advice to the OfS regarding the quality of, and standards applied to, higher education provided by a provider.
- 2.7 As such, the effective performance of the Assessment Functions is central to the ability of the OfS to discharge its duties under HERA in reaching its decisions about whether an individual provider meets initial and ongoing registration conditions and about the authorisation, variation or revocation of DAPs. It follows that the Assessment Functions must be performed in a manner that is not only fit to serve the OfS's purposes, but one that the OfS considers to be compatible with its approach to regulation more broadly.
- 2.8 This is why paragraph 7 of Schedule 4 to HERA requires the OfS to make arrangements for holding the QAA, as the Designated Assessment Body, to account for the performance of the Assessment Functions. It is also why the OfS has power under paragraph 10 of Schedule 4 to HERA to give the QAA general directions about the performance of any of the Assessment Functions.
- 2.9 This Memorandum of Understanding sets out how the OfS has asked the QAA to perform the Assessment Functions and how it will hold the QAA to account for doing so.
- 2.10 The parties do not intend this document to be legally binding and this document shall not create (nor should it be treated as creating) any legally binding duties between the parties.

3. GENERAL OBLIGATIONS OF THE OFS

In its dealings with the QAA under this Memorandum of Understanding and its oversight of the performance of the Assessment Functions by the QAA, the OfS will:

- 3.1 act in accordance with the terms of this Memorandum of Understanding and the provisions of HERA as set out in clause 2 above;
- 3.2 have regard to its general duties under section 2(1) of HERA and any guidance given to it by the Secretary of State in accordance with section 2(3) of HERA;
- 3.3 comply with any general directions given to it by the Secretary of State pursuant to section 77 of HERA; and

-
- 3.4 have regard to the need to protect the expertise of the QAA and the QAA's ability to make, or make arrangements for, an impartial assessment of the quality of, and the standards applied to, higher education provided by a provider.

4. GENERAL OBLIGATIONS OF THE QAA

In its dealings with the OfS under this Memorandum of Understanding and its performance of the Assessment Functions, the QAA will:

- 4.1 act in accordance with the terms of this Memorandum of Understanding and the guidance issued under it from time to time in writing by the OfS;
- 4.2 perform the Assessment Functions in a manner which the OfS considers to be compatible with the OfS's approach to regulation as set out in the regulatory framework and which adheres to the Regulatory Principles;
- 4.3 comply with any general directions given to it by the OfS under paragraph 10 of Schedule 4 to HERA;
- 4.4 comply with all applicable Law; and
- 4.5 incur only reasonable costs.

5. SPECIFIC OBLIGATIONS OF THE QAA

5.1 In performing the Assessment Functions under section 23 of HERA, the QAA will:

- 5.1.1 design and deliver a quality and standards review method to provide an assessment against the Expectations and Core Practices of the Quality Code that allows the OfS to determine whether a provider satisfies the initial conditions of registration B1, B2, B4 and B5.
- 5.1.2 design and deliver a method to review providers referred by the OfS because there is an actual or suspected breach, or may be an increased risk of a breach, of conditions B1, B2, B4 or B5.
- 5.1.3 provide advice as part of the OfS's process to identify providers that may require an assessment by the QAA of the standards applied to higher education.
- 5.1.4 design and deliver a quality and standards review method as a component of the OfS's approach to random sampling.
- 5.1.5 undertake sector-level activities relating to the quality of, and standards applied to, higher education as agreed from time to time with the OfS.
- 5.1.6 carry out such other tasks regarding the quality of, and standards applied to, higher education provided by a provider which the OfS may from time to time reasonably require.

5.2 In performing the Assessment Functions under section 46 of HERA, the QAA will:

- 5.2.1 when requested by the OfS under section 46(1), provide advice to the OfS in relation to:
- (a) New DAPs:

-
- (i) the initial assessment of providers under the New DAP test;
 - (ii) monitoring the use of New DAPs by a provider during the probationary period; and
 - (iii) assessment of providers against the relevant criteria for the authorisation of DAPs at the end of the probationary period.
 - (b) Full DAPs:
 - (i) the initial assessment of applicants for Full DAPs;
 - (ii) the monitoring and scrutiny of applicants for Full DAPs; and
 - (iii) the assessment against the relevant Full DAPs criteria at the end of the scrutiny period.
 - (c) Indefinite DAPs: the assessment of providers against the relevant criteria for authorisation of indefinite DAPs; and
 - (d) the assessment of providers against the relevant DAPs criteria where a provider has notified the OfS of a 'reportable event' and the OfS deems it necessary to seek advice from the QAA about the implications of this for the provider's DAPs authorisation;
- 5.2.2 inform the OfS of any issues that may affect the OfS's assessment of risk identified through the QAA's assessment, monitoring and review activities which are relevant to the OfS's ongoing risk assessment of providers; and
- 5.2.3 carry out such other tasks regarding the quality of, and standards applied to, higher education provided by a provider which the OfS may from time to time reasonably require.
- 5.3 Schedule 2 sets out the Activities and Milestones required to deliver the Specific Obligations set out in clauses 5.1 and 5.2 above. The Activities and Milestones set out in Schedule 2 will be updated each year on the basis set out in Schedule 6.

6. PROVISION OF INFORMATION TO THE OFS

- 6.1 Pursuant to sections 27(4) and (5) of HERA, the OfS may require the QAA by notice to provide it with any information held by the QAA for the purposes of the performance of the Assessment Functions, if such information is required by the OfS for the performance of any of its functions.
- 6.2 In accordance with section 27(6) of HERA, a notice under clause 6.1 may require the information to be provided:
- 6.2.1 by a time specified in the notice; and
 - 6.2.2 in the form and manner specified in the notice.
- 6.3 In accordance with section 27(7) of HERA, if the QAA fails to comply with a notice made under clause 6.1 and does not satisfy the OfS that it is unable to provide the information requested in such notice, the OfS may enforce the duty to comply with the notice in civil proceedings.

7. INTELLECTUAL PROPERTY

- 7.1 The parties intend that any Intellectual Property Rights created in the course of the performance of the Assessment Functions shall vest in the party whose employee created them.
- 7.2 Where any Intellectual Property Right vests in either party in accordance with the intention set out in clause 7.1 above, that party shall grant an irrevocable licence to the other party to use that Intellectual Property Right for the purposes of the performance of that party's obligations under HERA, this Memorandum of Understanding and/or any [guidance] issued under it.

8. REPORTING AND MEETINGS

- 8.1 The QAA will provide the Management Reports in the form and at the intervals set out in Schedule 4.
- 8.2 The Authorised Representatives and relevant Key Personnel will meet in accordance with the details set out in Schedule 5 and the QAA will, at each meeting, present its previously circulated Management Reports.

9. MONITORING

- 9.1 The OfS will monitor the performance of the Assessment Functions by the QAA in accordance with Schedule 5.
- 9.2 The QAA will co-operate, and will procure that its Sub-Contractors co-operate, with the QAA in carrying out the monitoring referred to in clause 9.1.

10. CONTINUOUS IMPROVEMENT

- 10.1 The QAA is committed to identifying new or potential improvements to the performance of the Assessment Functions. As part of this commitment, the QAA shall identify and report annually to the OfS's Authorised Representative:
- 10.1.1 the emergence of new and evolving relevant technologies which could improve the performance of the Assessment Functions;
 - 10.1.2 new or potential improvements to the Assessment Functions including the quality, responsiveness, procedures, methodology and reporting in relation to the Assessment Functions;
 - 10.1.3 learning and changes or improvements as a result of any appeals or legal challenges; and
 - 10.1.4 changes in ways of working that would enable the Assessment Functions to be delivered at lower cost.

11. AUDIT

- 11.1 During the time that the QAA is the Designated Assessment Body and for six years after the QAA ceases to be the Designated Assessment Body, the OfS may conduct an audit of the QAA for the following purposes:
- 11.1.1 to review the integrity, confidentiality and security of any data relating to the OfS or any providers;

-
- 11.1.2 to review the QAA's compliance with the DPA, the FOIA, in accordance with clause 13 (Freedom of Information) and clause 14 (Data Protection) and any other legislation applicable to the Services;
 - 11.1.3 to review any records created during the performance of the Assessment Functions;
 - 11.1.4 to review any books of account kept by the QAA in connection with the performance of the Assessment Functions;
 - 11.1.5 to verify the accuracy and completeness of the Management Reports delivered or required by this agreement; and
 - 11.1.6 to verify that the QAA is charging Fees to providers in accordance with section 28 of HERA.
- 11.2 The OfS may not conduct an audit under this clause 11 more than twice in any calendar year.
- 11.3 The OfS will use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the QAA or delay the performance of the Assessment Functions.
- 11.4 Subject to the OfS's obligations of confidentiality, the QAA will on demand provide the OfS (and/or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- 11.4.1 all information requested by the above persons within the permitted scope of the audit;
 - 11.4.2 reasonable access to any sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Assessment Functions; and
 - 11.4.3 access to the QAA's Personnel.
- 11.5 The OfS will endeavour to (but is not obliged to) provide at least 15 Working Days' notice of its intention or, where possible, a regulatory body's intention, to conduct an audit.
- 11.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause

12. SUITABILITY TO PERFORM THE ASSESSMENT FUNCTIONS

- 12.1 The QAA will inform the OfS as soon it becomes aware of any reason why it may or will no longer meet the Suitability Conditions.

13. FOIA AND EIRS

- 13.1 The parties acknowledge that the OfS is subject to the requirements of the FOIA and the EIRs, and that the QAA is committed to complying with the spirit of the FOIA and the EIRs through its own policies and procedures.
 - 13.1.1 Each party will provide all necessary assistance and cooperation as reasonably requested by the other party to enable that party to comply with

its obligations under the FOIA and EIRs or under its own information publication scheme, as applicable;

13.1.2 Each party will consult the other party, if reasonably practical, before responding to any Request for Information relating to this Memorandum of Understanding and the performance of the Assessment Functions that it receives; and

13.2 Notwithstanding the provision at paragraph 13.1.2, the QAA acknowledges that the OfS may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the QAA. The OfS shall take reasonable steps to notify the QAA of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the OfS shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

13.3 Notwithstanding any other term of this Memorandum of Understanding, the QAA consents to the publication of this Memorandum of Understanding in its entirety (including variations).

13.4 The OfS will, prior to publication, consult with the QAA on the manner and format of publication, but shall have the final decisions in its absolute discretion. The QAA will assist and co-operate with the OfS to enable the OfS to publish this agreement.

14. **DATA PROTECTION**

14.1 The parties agree that they will (and will procure that any of their Personnel involved in the performance of the Assessment Functions will) comply with their obligations under the Data Protection Legislation, which arise in connection with this Memorandum of Understanding.

15. **CONFIDENTIALITY**

15.1 Subject to clause 15.2, each party will keep the other party's Confidential Information confidential and will not:

15.1.1 use such Confidential Information except for the purpose of performing the that party's obligations under HERA, this Memorandum of Understanding and any guidance issued under it; or

15.1.2 disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 16.1

15.2 The obligation to maintain confidentiality of Confidential Information does not apply to any Confidential information:

15.2.1 which the other party confirms in writing is not required to be treated as Confidential Information;

15.2.2 which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;

-
- 15.2.3 which a party is required to disclose by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the FOIA or the EIRs;
 - 15.2.4 which is in or enters the public domain other than through any disclosure prohibited by this agreement;
 - 15.2.5 which a party can demonstrate was lawfully in its prior to receipt from the other party; or
 - 15.2.6 which is disclosed by the OfS on a confidential basis to any central government or regulatory body.
- 15.3 A party may disclose the other party's Confidential information to those of its Representatives who need to know such Confidential Information for the purposes of performing or advising on the party's obligations under HERA, this Memorandum of Understanding and any [guidance] issued under it, provided that:
- 15.3.1 it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
 - 15.3.2 it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to this Memorandum of Understanding,
 - 15.3.3 and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this clause 15.3.
- 15.4 The provisions of this clause shall apply during the continuance of the Memorandum of Understanding and for six years after its expiry or termination.

16. **DISPUTE RESOLUTION**

16.1 If a dispute arises out of or in connection with the performance by the QAA of the Assessment Functions or in connection with this Memorandum of Understanding or the guidance issued under it (a **Dispute**), the parties shall follow the procedure set out in this clause:

16.1.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On receipt of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;

16.1.2 if the Authorised Representatives are for any reason unable to resolve the Dispute within 30 days of receipt of the Dispute Notice, the Dispute shall be referred to the OfS's Chief Executive and the QAA's Chief Executive who shall attempt in good faith to resolve it.

17. **NOTICES**

17.1 Any notice given to a party under or in connection with this Memorandum of Understanding shall be in writing marked for the attention of the party's Authorised Representative and shall be:

17.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

17.1.2 sent by email to the address specified in Schedule 3.

SIGNATURE PAGE

SIGNED by Douglas Blackstock
for and on behalf of
The Quality Assurance Agency for Higher Education



.....
(Signature)

25th June 2018

.....
(Date)

SIGNED by Susan Lapworth
for and on behalf of
The Office for Students



.....
(Signature)

4th July 2018

.....
(Date)

SCHEDULE 1: REGULATORY PRINCIPLES

1. The OfS's regulatory framework (OfS 2018.01) sets out the way it intends to perform its functions. In performing its functions, the OfS will have regard to its general duties set out in section 2 of HERA. In making decisions it will take all of these general duties into account weighing one against the others as it deems appropriate.
2. The Designated Assessment Body is required to understand, adopt and deliver in practice the approach to regulation set out in the regulatory framework. Some key issues are set out in the paragraphs that follow, but this is not an exhaustive list and is not intended to substitute for the whole regulatory framework.

Approach to regulation

3. The OfS's regulatory approach is designed to be principles-based because the higher education sector is complex, and the imposition of a narrow rules-based approach would risk leading to a compliance culture that stifles diversity and innovation and prevents the sector from flourishing. The regulatory framework does not therefore set out numerical performance targets, or lists of detailed requirements for providers to meet. Instead it sets out the approach that the OfS will take as it makes judgements about individual providers on the basis of data and contextual evidence.
4. As a whole, the regulatory framework is intended to ensure:
 - a) A student focus: Regulation will be designed primarily to protect the interests of students, short, medium and long term (especially the most disadvantaged), rather than those of providers.
 - b) Clarity: All registered providers will be primarily regulated by one body, with a clear path for new entrants to the sector.
 - c) Accountability: The OfS will be accountable for its decisions and subject to public scrutiny.
 - d) Consistency: There will be a single Register so students will know the minimum baseline of provision that they can expect every registered provider to deliver, and providers will compete on a level playing field.
 - e) Proportionality and targeting: Provision that presents low risk to students will be subject to less regulatory burden, while less secure elements of provision will face greater regulatory scrutiny.
 - f) Competition: The market will be regulated so that, wherever possible, choice and competition drive innovation, diversity and improvement. Where market mechanisms are not sufficient to achieve the desired outcomes, as is the case for access and participation, there will be direct regulation of providers.

Removing unnecessary barriers to entry and minimising regulatory burden for all providers

5. There will be a marked shift from the previous approach to regulation. Once the regulatory framework is established, its implementation will reduce bureaucracy and unnecessary regulatory burden for individual providers and, as a consequence, for the academic and professional staff whose work is essential to successful outcomes for students.
6. The OfS's regulatory framework has been designed to take account of the needs of a diverse range of providers, including providers entering the higher education sector for the first time, and existing providers that represent the diversity already present in the sector. The OfS will regulate providers based on any risks they pose, not their age, size, mission or legal form.
7. The regulatory framework will support new and existing providers, in particular through the following mechanisms:
 - a) Recognition of the diversity of the sector. A diverse sector supports student choice. The conditions of registration are explicitly tailored to a diverse set of providers, by focusing on the outcomes a provider is expected to achieve, rather than determining how this should be done. Providers are free to determine their individual mission, strategy and approach.

-
- b) Minimising regulatory burden. Providers that do not pose specific increased risk will be subject to light touch monitoring and should have less regulatory burden once this regulatory framework is established. Such providers will be free to innovate however they choose, provided that they continue to deliver positive outcomes for their students.
 - c) New and faster options for market entry. The initial conditions of registration are designed so that providers do not need to have a track record of delivering higher education to be able to meet them. Where such a track record does exist, the OfS will take it into account, but there are other ways to evidence that a condition of registration is satisfied. There will also be a faster route for high quality new providers to gain access to degree awarding powers directly, without the need for a track record. The approach to DAPs authorisation will be designed and implemented to ensure that barriers to competition are removed.

Ensuring a minimum baseline of quality for all and promoting excellence and innovation beyond that baseline

- 8. The OfS's approach to regulation puts informed student choice and institutional autonomy at its heart. It sees the dynamic of providers responding to informed student choice as the best mechanism for driving quality and improvement, and will regulate at the sector level to enable this. The OfS will regulate at provider level to ensure a baseline of protection for all students and the taxpayer. Beyond this minimum, autonomous providers are free to pursue excellence continuous improvement and innovation as they see fit.
- 9. The conditions of registration for quality and standards that apply to individual providers are therefore designed to ensure a minimum baseline of protection for all students. They are also designed to focus on outcomes rather than the processes that a provider might choose to use to deliver such outcomes. They are not designed to require or reward continuous improvement, either directly or indirectly.
- 10. For example, condition B1 requires a provider to 'deliver well-designed courses that provide a high quality academic experience for all students and enable a student's achievement to be reliably assessed.' A focus on outcomes rather than processes requires a review method that assesses and reports on whether, in practice:
 - a. courses are well-designed;
 - b. the academic experience is of high quality;
 - c. student achievement is reliably assessed.
- 11. An assessment of the systems and processes used by a provider to, for example, design courses would not be sufficient.
- 12. For example, condition B5 requires a provider to 'deliver courses that meet the academic standards as they are described in the Framework for Higher Education Qualification (FHEQ) at Level 4 or higher.' A focus on outcomes rather than processes requires a review method that assesses and reports on whether, in practice:
 - a. courses meet the sector recognised standards as defined in the regulatory framework.
- 13. An assessment of the systems and processes used by a provider to set, monitor and maintain standards would not be sufficient.

Accountability and rigor of decision-making

14. The OfS expects to be held to account for the quality of its decisions by individual providers and by students and other stakeholders. HERA grants significant powers and duties to the OfS and the impact of its decisions will sometimes have far-reaching consequences for students and for providers.
15. As the QAA performs the Assessment Functions it will be required to reach valid and reliable assessments of quality and standards that deliver in practice the OfS's approach to regulation. It will also be required to provide clear, evidence-based and accurate advice that allows the OfS to make its regulatory decisions with confidence. The QAA is committed to performance to this standard, acknowledging that this will require, adequate and effective management and governance practices, and the deployment of regulatory and investigatory expertise in the design, implementation and operation of the assessment functions.

SCHEDULE 2: DQB ACTIVITIES AND MILESTONES 1 JUNE 2019 TO 31 MARCH 2020

Changes may need to be made to the activities and milestones listed in this document. Any changes must first be set out in writing and discussed by the operational liaisons listed in schedule 3 of the designation agreement.

Specific obligation (summarised from section 5 of the designation agreement)	DQB Activities and Milestones	OfS Activities and Milestones
To ensure that the DQB and its staff are equipped to perform the quality and standards functions		
Design and deliver a programme of ongoing CPD for DQB staff.	<ul style="list-style-type: none"> Design and deliver a programme of ongoing CPD for all DQB staff, to be led by DQB senior managers, to ensure that the OfS's regulatory approach and requirements are understood by them and delivered in practice. QAA Board members to be invited to attend. 	<ul style="list-style-type: none"> Contribute expertise to the DQB's development sessions, in support of DQB senior managers.
Conduct a 'lessons learned' exercise on the DQB's processes for preparing for and undertaking QSR and DAPs reviews.	<ul style="list-style-type: none"> Provide to the OfS a plan for a 'lessons learned' exercise by 15 December 2019. Provide the outcomes of the lessons learned exercise, and actions to be taken in response, to the OfS in the DQB's 2019-20 annual report. 	
In performing the Assessment Functions under section 23 of HERA, the DQB will:		The OfS will:
Design and deliver a quality and standards review method to provide an assessment against the Core Practices of the Quality Code that allows the OfS to determine whether a provider satisfies the initial or ongoing conditions of registration B1, B2, B4 and B5.	<ul style="list-style-type: none"> Receive and process referrals of providers from OfS in line with agreed processes and timescales. 	<ul style="list-style-type: none"> Refer providers for review using the agreed processes. At the time of referral, provide the agreed background information about the provider.
	<ul style="list-style-type: none"> Initiate and carry out reviews of providers in line with published guidance, including 	

	published timescales, and in line with any prioritisation requests received from OfS.	
	<ul style="list-style-type: none"> • Provide to the OfS reliable, consistent and evidence-based review reports as defined in the DQB's KPMs. 	<ul style="list-style-type: none"> • Provide specific feedback on DQB performance as described in the agreed KPMs.
	<ul style="list-style-type: none"> • Provide review reports to the OfS in line with agreed timescales, after any representations process has been exhausted. 	
	<ul style="list-style-type: none"> • Proactively and promptly inform the OfS of any issues that arise in conducting review activity, either for individual providers or in general, via regular liaison meetings and phone calls, particularly where providers are at risk of not being ready for review. 	
	<ul style="list-style-type: none"> • Review and update guidance for agreement by the OfS by 6 September 2019. 	
	<ul style="list-style-type: none"> • Prepare for the possible introduction of sector-recognised standards above the threshold by April 2020, subject to the OfS consultation on this matter. 	<ul style="list-style-type: none"> • Agree any activity to be undertaken in relation to the possible introduction of sector-recognised standards following the OfS consultation.
	<ul style="list-style-type: none"> • Ensure that all DQB reviewers are trained using AdvanceHE professional development sessions designed to understand and articulate their personal conceptualisations of standards and calibrate these in conversation with other reviewers and in line with the sector-recognised standards included in the QSR method, in order to 	

	<p>ensure consistent assessments of standards. Review plans for ongoing training of DQB reviewers to integrate this for future training sessions.</p>	
<p>Design and deliver a combined assessment method which will provide both a quality and standards review to provide an assessment against the Core Practices of the Quality Code that allows the OfS to determine whether a provider satisfies the initial conditions of registration B1, B2, B4 and B5 and provide advice to the OfS about whether the same provider meets the requirements of the 'New DAPs test'.</p>	<ul style="list-style-type: none"> • Receive and process referrals of providers from OfS in line with agreed processes and timescales. • Initiate and carry out assessments of providers in line with agreed guidance and timescales, and in line with any prioritisation requests received from OfS. • Provide to the OfS reliable, consistent and evidence-based reports as defined in the DQB's KPMs. • Provide review reports to the OfS in line with agreed timescales. • Proactively and promptly inform the OfS of any issues that arise in conducting review activity, either for individual providers or in general, via regular liaison meetings and phone calls, particularly where providers are at risk of not being ready for review. • Review and update guidance for agreement by the OfS by 6 September 2019. 	<ul style="list-style-type: none"> • Refer providers for review using the agreed processes. • At the time of referral, provide the agreed background information about the provider. • Provide specific feedback on DQB performance as described in the agreed KPMs. • Provide feedback on aspects of the guidance which need amending. • Contribute to review and update of guidance.
<p>Design and deliver a method to review registered providers referred by the OfS because there is an actual or suspected breach, or may be an increased risk of a breach, of conditions B1, B2, B4 or B5.</p>	<ul style="list-style-type: none"> • Receive and process referrals of providers from OfS in line with agreed processes and timescales. • Initiate and carry out reviews of providers in line with published guidance, including published timescales, and in line with any prioritisation requests received from OfS. 	<ul style="list-style-type: none"> • Refer providers for review using the agreed processes. • At the time of referral, provide the agreed background information about the provider.

	<ul style="list-style-type: none"> • Provide to the OfS reliable, consistent and evidence-based reports as defined in the DQB's KPMs. • Provide review reports to the OfS in line with agreed timescales. • Proactively and promptly inform the OfS of any issues that arise in conducting review activity, either for individual providers or in general, via regular liaison meetings and phone calls, particularly where providers are at risk of not being ready for review. 	<ul style="list-style-type: none"> • Provide specific feedback on DQB performance as described in the agreed KPMs.
	<ul style="list-style-type: none"> • Review and update published guidance for agreement by the OfS by 6 September 2019. 	<ul style="list-style-type: none"> • Provide input on aspects of the published guidance which need amending.
Provide advice to the OfS as it identifies providers that may require an assessment by the DQB of the standards applied to higher education.	<ul style="list-style-type: none"> • Make DQB staff with expertise in standards available to assist the OfS in its process to identify providers that may require an assessment by the DQB. 	
Design and deliver a quality and standards review method as a component of the OfS's approach to random sampling.	<ul style="list-style-type: none"> • Agree with OfS how the QSR method will be deployed as part of the OfS's approach to random sampling by end of January 2020. • Undertake assessments with the OfS for the initial phase of random sampling. • Conduct QSRs as necessary for individual providers as a consequence of the initial phase of random sampling. 	<ul style="list-style-type: none"> • Refer providers for review using the agreed processes. • At the time of referral, provide the agreed background information about the provider. • Provide specific feedback on DQB performance as described in the agreed KPMs.
Make proposals to the OfS about sector-level activities relating to the quality of and standards applied to, higher education.	<ul style="list-style-type: none"> • Complete the agreed activities for 2019-20 by April 2020. • Provide proposals for activities to be undertaken during the 2020-21 year for 	<ul style="list-style-type: none"> • Agree any sector-level activities to be carried out by the DQB in the 2020-21 year by end May 2020.

	consideration by OfS by end of January 2020.	
In performing the Assessment Functions under section 46 of HERA, the DQB will:		The OfS will:
<p>Provide advice to the OfS in relation to:</p> <p>a) For New DAPs: an initial assessment (the 'New DAPs test'); monitoring the use of New DAPs by a provider during the probationary period; assessment against the relevant DAPs criteria at the end of the probationary period.</p> <p>b) For Full DAPs: an initial assessment, monitoring and scrutiny of applicants for Full DAPs; assessment against the relevant DAPs criteria at the end of the scrutiny period.</p> <p>c) An assessment against the relevant DAPS criteria for a provider seeking indefinite DAPs or for a provider seeking an extension to subject specific DAPs.</p> <p>d) An assessment against the relevant DAPs criteria where OfS has concerns about a provider's continued ability to authorise DAPs securely.</p>	<ul style="list-style-type: none"> • Receive and process referrals of providers from OfS in line with agreed processes and timescales. • Initiate and carry out reviews of providers in line with published guidance, including published timescales, and in line with any prioritisation requests received from OfS. • Provide to the OfS reliable, consistent and evidence-based review reports as defined in the DQB's KPMs. • Provide review reports to the OfS within five working days of their consideration by ACDAP (or within five working days of the final outcome of any representations process, whichever is later). • Proactively and promptly inform the OfS of any issues that arise in conducting review activity, either for individual providers or in general, via regular liaison meetings and phone calls, particularly where providers are at risk of not being ready for review. 	<ul style="list-style-type: none"> • Refer providers for review in a timely manner using the agreed processes. • Provide background information and data on the provider to enable the DQB to conduct the review in an efficient and effective manner. • Provide specific feedback on DQB performance against this function as described in the agreed KPMs.
	<ul style="list-style-type: none"> • Develop an approach to DAPs reports in line with principles agreed for QSR and provide sample reports to the OfS. First draft of New DAPs sample reports should be provided by 12 July 2019 with further draft 4 September 2019. Full DAPs sample reports should be provided by 27 September 2019. 	

	<ul style="list-style-type: none"> • Design and deliver a review method to assess providers eligible for indefinite DAPs against DAPs criteria, with revised draft of guidance submitted on 4 September 2019. 	<ul style="list-style-type: none"> • Provide OfS's approach to DAPs variation and revocation. • Provide written feedback on the draft method for assessing providers eligible for indefinite DAPs.
	<ul style="list-style-type: none"> • Design and develop a DAPs review method to assess providers referred under OfS variation/revocation process with first draft being submitted by 4 September 2019. 	<ul style="list-style-type: none"> • Provide OfS's approach to DAPs variation and revocation. • Provide written feedback on the draft method for assessing providers under the OfS's variation/revocation process.
	<ul style="list-style-type: none"> • Design and develop an approach for monitoring and assessing providers during the new DAPs probationary period and regularly updating OfS on provider progress during the probationary period with submission of an initial draft approach submitted by 31 July 2019 and final process and any associated guidance for assessors agreed by 27 September 2019. 	<ul style="list-style-type: none"> • Provide initial written feedback on the draft approach for monitoring and assessing providers during the NDAPs probationary period by 21 August.
	<ul style="list-style-type: none"> • Design and implement a review process to evaluate own approach to DAPs assessments and consider enhancements to process by 28 February 2020. 	
	<ul style="list-style-type: none"> • Provide further training to the Advisory Committee on Degree-Awarding Powers (ACDAP) on the new approaches to DAPs at the Committee's September meeting. • Provide further training to ACDAP as necessary Draft training materials will be 	<ul style="list-style-type: none"> • Support training of ACDAP members as appropriate.

	submitted to the OfS 2 weeks in advance of planned sessions, or 2 weeks in advance of materials being sent to committee members, unless agreed otherwise with the OfS.	
--	--	--

SCHEDULE 3: AUTHORISED REPRESENTATIVES AND KEY PERSONNEL

For OfS

Susan Lapworth, OfS Director, is the OfS's authorised representative.

The OfS Head of Standards and Quality is responsible for operational liaison with QAA staff on all matters related to the Activities and Milestones set out in Schedule 2.

For QAA

Douglas Blackstock, Chief Executive, is the QAA's authorised representative.

The QAA Director of Quality Assessment, England is responsible for operational liaison with OfS staff on all matters related to the Activities and Milestones set out in Schedule 2.

SCHEDULE 4: REPORTING REQUIREMENTS

1. Triennial Report by the OfS to the Secretary of State

1.1 The OfS will set out by 31 January 2021 the approach that it intends to take to the triennial reporting process required by paragraph 9 of Schedule 4 to HERA. As part of this process the OfS will set out the information it requires from the QAA and the date by which this should be provided. It is expected that early discussion between the OfS and the QAA will be necessary to agree the most appropriate approach to this request for information.

2. Annual Report

2.1 As required by paragraph 8 of Schedule 4 to HERA, the QAA shall produce a report on the performance of the Assessment Functions during the previous year to 31 March (the "**Annual Report**")

2.2 The QAA shall produce the Annual Report as soon as possible after 1 April of each year, and in any event, no later than 30 April of each year.

2.3 The Annual Report will be evidence-based and will evaluate the effectiveness of the QAA's review and assessment methods, the implementation of these, and the outcomes generated. It will also evaluate the effectiveness of the QAA, as an organisation, as the designated body.

2.4 A draft of the Annual Report will be provided for the meetings of the OfS's formal committees in the early spring of each year to allow the OfS to provide feedback to the QAA.

3. Quarterly Report

3.1 Within two weeks of the end of each quarter (31 March, 30 June, 30 September and 31 December) QAA will provide a headline report on its progress against the Activities and Milestones set out in Schedule 2, drawing out any key features or issues which could aid the OfS in its regulation of providers (the "**Quarterly Report**").

3.2 The format of the Quarterly Report will be agreed and refined through quarterly liaison meetings.

SCHEDULE 5: MONITORING

1. Quarterly Monitoring

1.1 The Authorised Representatives and Key Personnel specified in Schedule 3 shall meet quarterly to review the QAA Quarterly Report.

2. Annual Monitoring

2.2 The Authorised Representatives and Key Personnel specified in Schedule 3 shall meet to review the Annual Report, prior to its presentation at the OfS Quality Assessment Committee.

SCHEDULE 6: AGREEMENT OF FUTURE ACTIVITIES AND MILESTONES

1. Agreement of future Activities and Milestones

1.1 The Authorised Representatives and Key Personnel specified in Schedule 3 shall agree no later than 30 May of each year the Activities and Milestones for the following year. These Activities and Milestones shall be set out in an updated Schedule 2.