

The statutory framework for quality and standards and the role of the OfS and any designated body

26 January 2023

1. In October 2022, we published a briefing note¹ setting out the approach the Office for Students (OfS) will take to assessing quality and standards from 1 April 2023 for an interim period. In that briefing we said that we would continue to consider options for longer-term arrangements for the designated quality body (DQB)² and would discuss these with sector representative groups. During those discussions we have found it helpful to explain the statutory framework for quality and standards and its implications for how quality and standards assessment functions are performed by the OfS or any designated body. This note provides a fuller briefing on these issues for providers.

The elements of the statutory framework

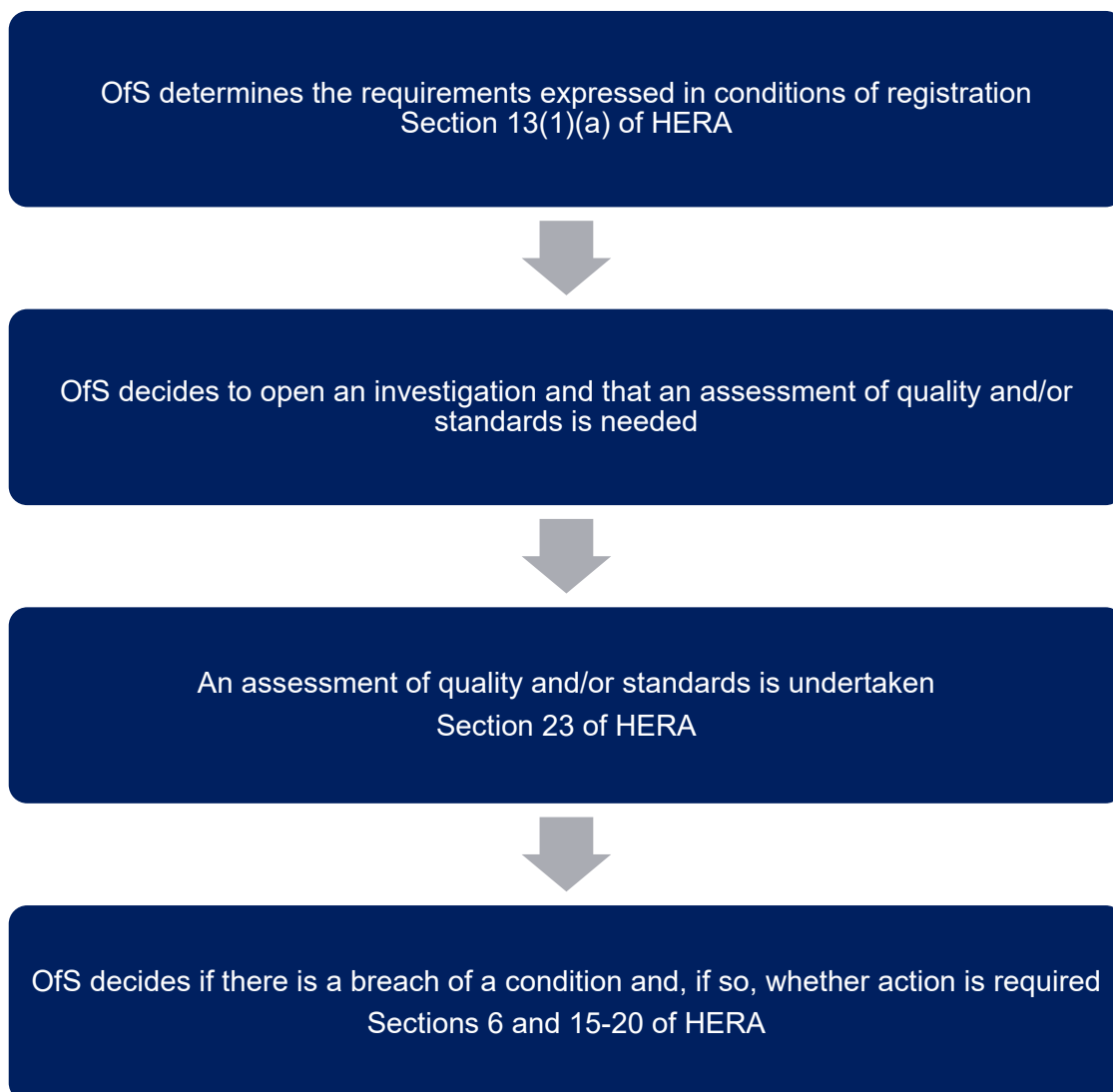
2. There are several parts of the Higher Education Research Act 2017 (HERA) that are relevant in understanding the statutory provisions for quality and standards:
 - a. First, the OfS has the power to determine conditions of registration for quality and standards. We have done this recently when we revised the 'B conditions'.³
 - b. Second, section 23 of HERA says that the OfS must assess, or make arrangements for the assessment of, quality and standards for providers seeking registration or those already registered. This duty is linked directly to the conditions of registration – the purpose of the assessment is to allow the OfS to determine whether conditions are satisfied.
 - c. Third, the OfS has powers to decide whether conditions have been satisfied – as part of a registration decision, or for a registered provider. We have powers to refuse registration or take further regulatory action where we consider there is a breach of an ongoing condition.
3. Figure 1 shows the steps in this process for an investigation of a registered provider. A similar process would apply for a provider seeking registration, with the final step involving refusal of registration if we judge that initial conditions are not satisfied.

¹ [Arrangements for assessing quality and standards from April 2023 - Office for Students](#)

² [The designated quality body \(DQB\) – Office for Students](#)

³ [Conditions of registration – Office for Students](#)

Figure 1: Process for investigating a registered provider

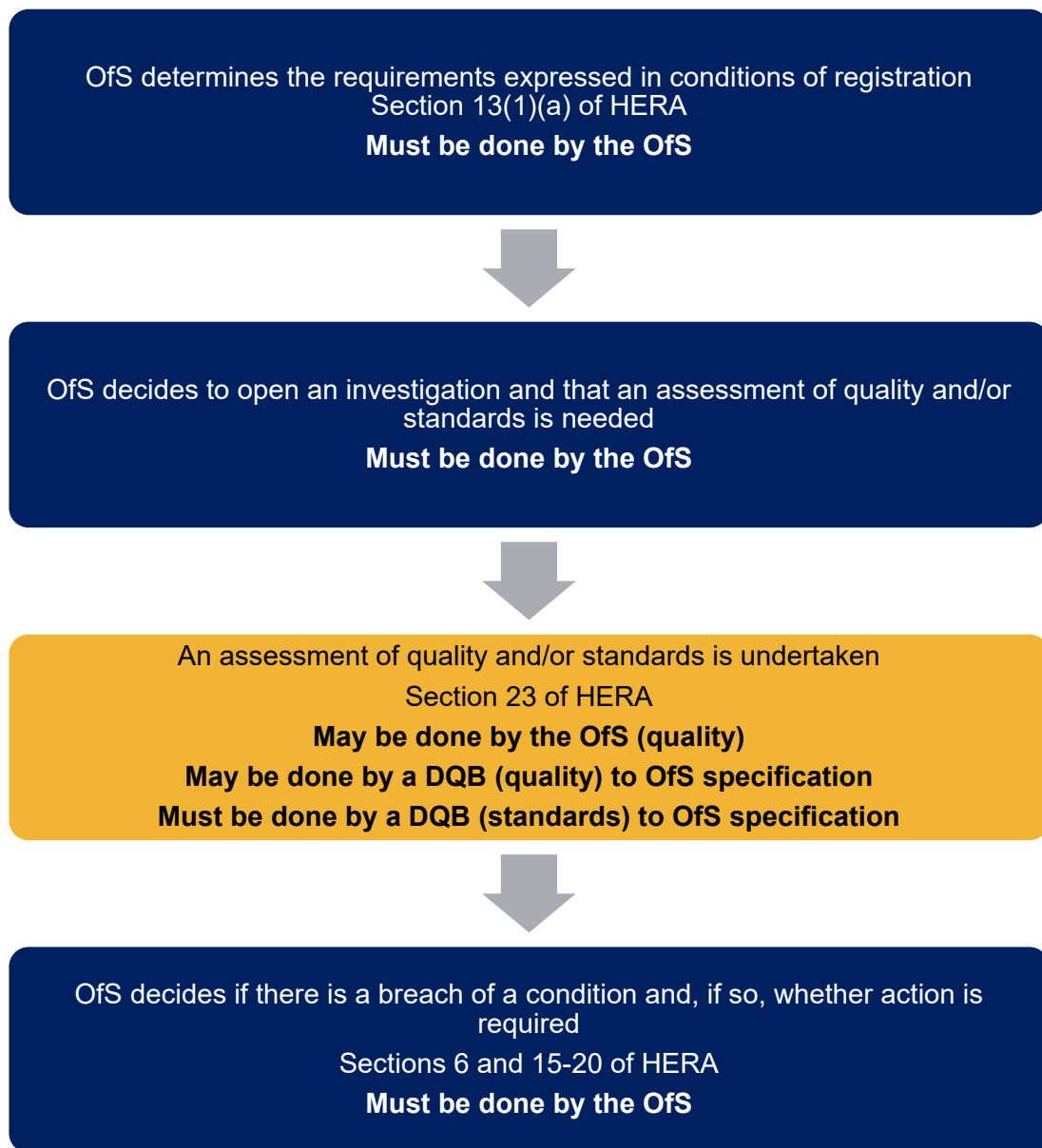


The role of a designated body

4. HERA makes provision for a body to be designated (a DQB) to perform the assessment functions. The 'assessment functions' are the functions referred to above in section 23 of HERA and the functions in section 46 of HERA which require a DQB to provide advice to the OfS in relation to degree awarding powers (DAPs).
5. In relation to section 23, when there is a designated body, only the DQB may assess standards. However, both the OfS and the DQB can assess quality – this mixed model is how we have operated in practice in recent times.
6. Importantly, none of the OfS's other functions can be performed by a DQB. This means that determining the scope of conditions of registration, identifying providers for investigation, deciding breaches and further regulatory action, always sits with the OfS and cannot be delegated.
7. Figure 2 shows the activities that are always carried out by the OfS, whether or not there is a DQB, and the activities that HERA says can be done by a DQB. When we discuss the scope of

the role of a DQB in undertaking assessments we are talking only about the part of this process indicated in yellow in Figure 2.

Figure 2: Activities carried out by the OfS or a DQB



8. The way in which the statutory framework is designed has consequences for the way that the assessment functions are delivered in practice, whether the OfS or a DQB delivers them. The assessment activities shown in yellow in Figure 2 must fit neatly into the broader process, and so:
- Assessments must be done in a way that is consistent with the OfS's general regulatory approach set out in the regulatory framework⁴ – for example, principles-based, focused on outcomes, and risk-based.
 - Assessments must be done in a way that directly relates to the scope and definitions in the OfS's conditions of registration – for example, a DQB cannot decide to adopt different

⁴ Securing student success: Regulatory framework for higher education in England – Office for Students

definitions of key concepts, or take a different approach to that set out in the regulatory framework guidance because that would mean the OfS would not be able to reach a view about whether a condition is satisfied.

- c. Assessments must result in assessment reports that enable the OfS to make reliable regulatory decisions, for example about registration or breaches. This means, for example, that judgements in a report must be properly evidenced and explained with reference to the requirements in the OfS's conditions of registration.
9. These points all flow from the way the statutory framework is structured in HERA and this limits the ability of a DQB to decide, independently of the OfS, what is assessed and how it is assessed.

The assessment activities

10. The assessment activities shown in yellow in Figure 2 involve the following:
- a. Recruiting and training independent academic experts to:
 - i. Understand and apply the OfS's approach to regulation and interpret the subject matter of relevant conditions of registration.
 - ii. Undertake assessments: scoping, evidence gathering and evaluation.
 - iii. Draft assessment reports to enable reliable regulatory decisions.
 - b. Identifying and managing conflicts of interest.
 - c. Engaging with providers and scheduling assessments and visits.
 - d. Quality assuring assessment reports and undertaking factual accuracy checks of reports with providers.
 - e. Providing final reliable assessment reports to OfS regulation team.
11. Deploying academic experts to reach judgements about quality and standards is the way that independence can be built into the assessment process. It matters less whether the organisation and coordination activities in (b)-(e) are undertaken independently. This means that when a DQB is undertaking assessments there are academic experts reaching independent judgements and DQB staff coordinating the process. When the OfS is undertaking assessments, it is similarly able to deploy academic experts to reach independent judgements with OfS staff coordinating the process.

Oversight of a designated body

12. The OfS is required by HERA to hold a designated body to account for the performance of the assessment functions. The OfS's Quality Assessment Committee (QAC) is required to provide advice about how a designated body performs the assessment functions in practice.
13. The QAC must have a majority of members who are independent and have experience of providing, or being responsible for the provision of, higher education. This means that oversight

of a DQB's performance is conducted by an independent committee with significant expertise and experience in delivering higher education to students.

14. The arrangements the OfS has previously put in place to perform its oversight role in relation to the DQB have included:
 - a. A designation agreement between the OfS and the DQB, which includes a schedule setting out the activities and milestones to be delivered by the DQB in each year.
 - b. A set of key performance measures against which the DQB's performance is measured by the OfS's QAC each quarter and at the end of each year.
 - c. Quarterly reports from the DQB on its activities and performance, which are discussed in quarterly meetings.
 - d. An annual report from the DQB on its activities and performance – this is required by HERA.
 - e. Regular meetings between the OfS's QAC and the chief executive and other senior staff of the DQB to discuss the DQB's activities and performance.
 - f. A periodic judgement about the degree of confidence the OfS's QAC has in relation to how the DQB has fulfilled its role.
15. HERA also gives the OfS the power to give general directions to a DQB about the performance of any of the assessment functions. In issuing a general direction the OfS is required to have regard to the need to protect the expertise of the DQB, and the ability of the DQB to undertake an impartial assessment of quality or standards for an individual provider.
16. The OfS is also required to make a triennial report to the Secretary of State on matters including how the DQB has performed the assessment functions and whether it should continue to be designated.
17. The OfS's approach to its oversight functions flows from the way the statutory framework is structured in HERA and this limits the ability of a DQB to decide, independently of the OfS, how it performs the assessment functions.