

Education and Training Committee, 23 November 2017

Consultation on Office for Students

Executive summary and recommendations

### **Introduction**

The Department for Education is consulting on the regulatory framework for the new Office for Students (an England only body). A copy of the consultation document is appended.

The Committee is invited to discuss the attached consultation document, and, in particular, to focus on part one (overview from page 26) and the summary of the changes in table 2 on page 25.

The Committee is specifically invited to consider:

- a) What the change from funding regulator to market regulator might mean for English education providers?; and
- b) What might these changes mean for us as a professional regulator?

### **Decision**

The Committee is invited to discuss this paper; no decision is required.

### **Background information**

None

### **Resource implications**

None

### **Financial implications**

None

### **Appendices**

OfS consultation document

### **Date of paper**

13 November 2017



Department  
for Education

# **Securing student success: risk-based regulation for teaching excellence, social mobility and informed choice in higher education**

**Government consultation on behalf of  
the Office for Students**

**Launch date 19 October 2017**

**Respond by 22 December 2017**

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## Introduction by Jo Johnson

Higher education is a vital part of England's culture, economy, and heritage. For individual students, it is a powerful tool for social mobility<sup>1</sup>, a route to a better material standard of living<sup>2</sup>, and a path to countless other unmeasurable benefits – the joy of learning, the pursuit of truth, new experiences and friendships forged.

And higher education is not solely for the students that experience it. The benefits extend far beyond the individual; it is a catalyst for enormous economic and social good. The sector contributes billions to the economy.<sup>3</sup> Graduates supply much needed skills to employers. Providers contribute to their communities, and can play a leading role in the development and esteem of a city or region. And higher education boosts our country's reputation on the global stage.



Higher education is clearly hugely important, and we are justifiably very proud of our world class sector. But more needs to be done, and the sector must not rest on its laurels. The Government has passed the Higher Education and Research Act 2017 (HERA) and introduced the Teaching Excellence and Student Outcomes Framework (TEF). Now the Office for Students through its regulatory framework must continue the push for improvement.

We have seen record numbers of students, but their demand for innovative provision such as two-year degrees too often goes unmet. Access has improved but remains uneven<sup>4</sup> and there is clear evidence that students from disadvantaged backgrounds and black and minority ethnic groups have worse outcomes in terms of retention,

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<sup>1</sup> The proportion of young people, for example, entering higher education in England is at its highest ever level, including those from the most disadvantaged backgrounds - UCAS Clearing Analysis 2017

<sup>2</sup> A woman's lifetime earnings are greater, on average, by £252,000 if she is a graduate than somebody who completes their education with 2 or more A-levels. For men the average lifetime premium is £168,000 - <https://www.gov.uk/government/publications/university-degrees-impact-on-lifecycle-of-earnings>

<sup>3</sup> English Universities alone contribute £23.3 billion to the economy, directly. <http://www.universitiesuk.ac.uk/policy-and-analysis/reports/Documents/2014/the-economic-impact-of-heis-in-england.pdf>

<sup>4</sup> Access to higher education is improving, but remains deeply uneven, with the most disadvantaged still 2.4 times less likely to enter in 2016 - UCAS End of Cycle report 2016, <https://www.ucas.com/file/86541/download?token=PQnaAI5f>

attainment, and progression to further study and highly skilled work.<sup>5</sup> Students' success relies on outstanding teaching, which remains only inconsistently available across the sector<sup>6</sup>. Confidence in standards is falling.<sup>7</sup> While the graduate premium on average remains strong, there is great variety between courses and providers in terms of how students progress.<sup>8</sup> And freedom of speech and debate is sometimes threatened by groups operating under the banner of 'no platforming' and 'safe spaces'.

The Office for Students will create a level playing field and encourage innovative providers to enter the market and meet demand. It will consider the interests of those from the most disadvantaged backgrounds in everything it does, including extending access agreements so they cover not only access to higher education but successful participation too – the job does not stop once someone enters higher education. It will take TEF to subject level, giving prospective students better and more granular information than ever before. It will challenge grade inflation wherever it finds it. It will take action where a provider does not deliver the standards and quality of education students have the right to expect. And it will be a staunch champion of freedom of speech, shining a light on any attempt to undermine it.

The Office for Students will focus on what matters most, protecting students' interests while removing unnecessary regulatory burdens. It will take an outcomes-based approach, allowing for diverse, innovative approaches and models of provision, and driving choice and competition, so students can get the university experience that is right for them. Students will be empowered through clearer student contracts and through a transparency revolution. They will have better information on the quality of teaching and on student outcomes, and will be able to see how their provider is providing value for money and what senior staff are paid.

This consultation sets out proposals for how the Office for Students will act as a regulator, and the expectations it will set for providers.

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<sup>5</sup> <http://www.hefce.ac.uk/analysis/HEinEngland/students/>

<sup>6</sup> Three in ten students feel they receive poor value from their academic experience - <http://www.hepi.ac.uk/wp-content/uploads/2017/06/2017-Student-Academic-Experience-Survey-Final-Report.pdf>, chapter 6

<sup>7</sup> There are concerns about unwarranted grade inflation eroding the value of a high-class degree. <http://www.bbc.co.uk/news/education-40654933>

<sup>8</sup> The OECD has found 7% of graduates leave HE with a low level of the basic skills they will need for success in employment. <https://www.oecd.org/unitedkingdom/building-skills-for-all-review-of-england.pdf>

I encourage everyone with an interest in the success of our higher education system to share their views.

A handwritten signature in black ink, reading "Jo Johnson". The signature is written in a cursive, flowing style.

Jo Johnson MP, Minister of State for Universities, Science, Research and Innovation

## Foreword by the OfS Chair designate, Sir Michael Barber

Our higher education sector is a jewel in this country's crown. Our students, in all their wonderful diversity, are some of the most passionate, knowledgeable hardworking and engaged in the world. Indeed, I believe that contemporary students are the best educated generation our country has ever seen. No wonder our graduates are sought after by employers locally and across the globe. Meanwhile our universities, colleges, and specialist providers have an enviable international reputation for providing much of the world's best teaching and research and for the cultural and economic contribution they make to the places where they are located.



There are those who believe that all has been downhill since a golden age of higher education in the 1960s and 70s. That view cannot be sustained by the evidence. It was an era when only a small minority of each cohort benefitted from higher education while the vast majority went straight from school to work at age 16 or 18. Successive reforms between 1992 and 2011 led to higher quality, greatly increased numbers of students, a welcome diversity and fairer access.

The 2017 Higher Education and Research Act creates a new regulatory environment for the resulting new era, with the Office for Students (OfS) at its heart. This document sets out our thinking on how the OfS's regulatory framework should work in practice and seeks the views of all those with an interest so that we can refine and improve our thinking.

Regardless of the undoubted progress over recent decades, there are many significant challenges ahead: for example, despite great improvements, there is much more to do to enable equity not just of access to higher education but also successful completion of it and progression into rewarding employment. Meanwhile the prospect of Brexit requires us to reflect on and strengthen our skills base, even as global trends disrupt economies, nations and individuals, creating opportunities and threats in equal measure. Echoing Lionel Robbins in his seminal 1963 report: 'however well the country may have been served by the [...] activities and initiatives of the past, we are clear that from now on these are not good enough'.



The creation of the OfS presents a huge opportunity to rise to these challenges. It is my responsibility as first Chair of the OfS to ensure that this opportunity is seized so that English higher education delivers on students' needs and aspirations.

On social mobility, there is a huge opportunity to do much better. The creation of the OfS brings a new opportunity to strengthen ties between schools, colleges and universities and to think innovatively about diverse pathways to success in work and life. Similarly, the OfS should encourage innovative provision for mature learners – gone is the time when graduating at the age of 22 or 23 represented the end of education and the beginning of work. Now, learning throughout life is not just a worthy aspiration but an essential ingredient of a career. As the Canadian educator, Michael Fullan, puts it, 'the learning is the work and the work is the learning'. In these ways and others, the OfS will approach widening participation holistically and ensure that it is a fundamental aspect of everything we do.

On teaching, we will take the Teaching Excellence and Student Outcomes Framework (TEF), which has been so successfully developed so far, to subject level as soon as possible, driving improvements in teaching, providing better information for students and empowering choice.

For potential new providers of higher education, we will make it simpler and easier to enter the sector, while demanding always a high bar of quality. New entrants will catalyse further innovation in teaching and course design and provide new opportunities for students.

On employability, we will work closely with all the relevant parts of Government, to deliver the forthcoming Industrial Strategy, and especially with UKRI, to ensure our mutual ambitions and processes are coordinated and minimise bureaucracy. Given the dramatically changing nature of the global economy, and the associated geopolitical uncertainty, there is an increasingly strong relationship between the quality and extent of higher education and our country's future economic success at local, regional and national level. It is no exaggeration to say that our country's future depends more than ever on the success of our higher education institutions. This perspective will always inform our strategic thinking.

As we advance these emerging priorities we will not forget the underlying values of higher education, the essential ingredients that define a university: the joy and value of knowledge pursued for its own sake; the pursuit of the good, the true and the beautiful; the fundamental importance of freedom of speech and vigorous disagreement based on mutual respect; not to mention the wider experiences of a higher education which go far beyond the course pursued and include art, drama, music, sport, volunteering, political activity and, not least, enduring friendships.

Fundamentally, therefore, I see the role of the OfS as one of stewardship. We will tend the higher education landscape, enabling and encouraging it to seize the opportunities that lie ahead while simultaneously managing the threats.

We will always put the student at the centre of our approach, working tirelessly to protect and promote their interests in the short, medium and long term. To do so, the OfS will need to maintain a rich, honest, and open dialogue with providers and other stakeholders and I look forward to this consultation beginning exactly that. We will, however, be uncompromising in our protection of students' interests – acting swiftly and unapologetically where necessary, unafraid to face individual institutions, and the sector as a whole, with hard truths. For example, we will insist on value for money not just for the student but also for the taxpayer.

We will embrace both collaboration and competition. We will not reduce higher education to a crude transaction between buyer and seller; instead we will appreciate it as a partnership between students and educators. Simultaneously, we will encourage diversity of provision and embrace the power of student choice to drive continuous improvement.

We will be forward-looking and strategic in our approach. While necessarily the OfS will deal with the short-term pressures of the day, we will do so always with a focus on the future. We will continually scan the horizon in the search for new opportunities. We intend to set a course for decades ahead; to do so we need look beyond our own time, considering the needs and aspirations of students not just over two or three years but over two or three decades.

The OfS will work with all those interested to seize the opportunities that lie before us. Throughout we will live up to our name, and ensure the English higher education sector works for students and their future success.

Golden ages don't have to be in the past.

A handwritten signature in black ink, appearing to read 'M. Barber', with a long horizontal flourish extending to the right.

Sir Michael Barber, OfS Chair designate

## Navigation of this document

### Purpose of this consultation and audiences

The Higher Education and Research Act 2017 ('HERA') makes provision for the establishment of a new regulator – the Office for Students ('OfS') – and a new regulatory framework. This consultation (consisting of three documents – this document; the Guidance which sets out the conditions, behaviours and evidence for registration with the OfS; and the Approach to transition – provider roadmaps) is designed to:

- a) consult on the regulatory framework and related issues, on behalf of the OfS. The responses will inform the OfS's decision making, and enable it to meet the relevant consultation requirements set out in HERA
- b) set the context for the creation of the OfS and for the proposed regulatory approach
- c) inform providers of the proposed approach, allowing them to prepare for the changes and the transition to the new regulatory regime. This includes how existing and new providers will be regulated between 1 April 2018 and 1 August 2019, and the evidence required for initial registration with the OfS

The document is aimed at:

- students and bodies representing the interests of students on higher education courses provided by English higher education providers (providers).
- providers and bodies representing the interests of providers
- others including but not limited to employers, charities and research bodies that are not themselves providers

**We are especially interested in the views of students (prospective, current, and former), on whose behalf OfS will regulate, and providers, who will be subject to its regulation.**

The document is at times quite technical, as it must deal with the detail of the regulatory relationship between the OfS and providers. You may wish to refer in the first instance to chapter 1 which sets out the objectives and approach without the level of technical detail provided in the rest of the document. We have also separately published a [summary focused on the proposals most relevant to students](#).

### Consultation requirements

This document is designed in particular to meet the requirement in Section 75 of HERA to consult ahead of the OfS's publication of a regulatory framework. The regulatory framework must consist of (a) a statement of how the OfS intends to perform its functions, and (b) guidance for registered providers on the general

ongoing registration conditions. This consultation therefore seeks views on both of these: the former is covered in the consultation document itself and the latter in a separate document entitled “Guidance on the conditions, behaviours and evidence for registration with the Office for Students” (referred to as “the Guidance”). As well as addressing the general consultation requirements in Section 75, this consultation is also aimed at meeting the consultation requirements under sections 5 and 14 of HERA in relation to the initial and general ongoing registration conditions and public interest principles respectively.

The framework is built on the requirements of HERA. As these requirements are already laid down in legislation, they are not subject to formal consultation. These elements include:

- the creation of a single register for all providers
- the general duties, which will inform how the OfS approaches all of its functions. This includes amongst other things OfS’s proportionate approach to regulation, its concern with competition and choice and the importance of institutional autonomy
- some of the initial and general ongoing conditions which are identified as mandatory in HERA – these are identified in the Guidance
- the sanctions available to the OfS

**Table 1: Consultation requirements and where detail can be found in this document**

<b>The OfS’s functions</b>	<b>Relevant chapter(s) or other consultations</b>	<b>Section of HERA containing function</b>
Establishment of the OfS	Executive Summary, chapters 4-5, the Guidance	1, 2 Schedule 1
The register	Chapters 3-5, 7, the Guidance,	3, 4
Registration conditions	Chapter 4-5, 9 the Guidance	5, 6, 14
Risk assessment	Chapter 5	7, 75
Enforcement	Chapter 5	15-21 61, Schedule 5 73, Schedule 7
Voluntary de-registration	Chapter 5	22
Quality and standards	Chapters 2, 4-5, 9 the Guidance DQB consultation	23-25, 27 Schedule 4
Access and participation	Chapters 4-5 , the Guidance	ss. 29-32 33, 35, 36
Student transfers	Chapter 2, 5 the Guidance	38
Grant funding	Chapters 2, 4, 5, 9, the Guidance	39 to 41

Degree awarding powers and university title	Chapters 3-4 DAPs/UT consultation	2(3), 42-48, 56-57, ss. 58-59
Validation	Chapter 8	50, 51
Information powers	Chapters 5-6 DDB consultation	62, 63
Information duties	Chapters 2, 5-6 DDB consultation	64-66, 68-72, 112-114 Schedule 6
Financial sustainability	Chapters 4-5, 9, the Guidance	68
Efficiency studies	Chapter 5	69
OfS registration fees	Chapter 4, 5, the Guidance OfS registration fees consultation	70, 71
Cooperation with UKRI and joint working	Chapter 6	46, 112, 113

While this document is primarily a consultation on behalf of the OfS, we, the Government, are also using it to consult on other matters ahead of the Secretary of State making a decision on guidance or secondary legislation. This is on:

- amending the student support regulations to remove or amend the eligibility for two types of courses. This is addressed in chapter 4
- matters relating to the OfS becoming Principal Regulator for exempt charities, which is also a matter for the Secretary of State, although based on how the OfS will carry out its functions under HERA. This is addressed in chapter 4 and Annex C

### **Next steps and timetables**

The OfS will be able to treat this consultation as fulfilling the statutory consultation requirements listed above, under section 118(3) of HERA, and responses to this consultation will inform the further design of the regulatory framework. The OfS will be established in January 2018: our intention is that it will publish the regulatory framework around February/ 2018, in order for it to be able to start to register providers in April 2018 in advance of the Academic Year 19/20 when the regulatory framework will be fully in force. Please refer to chapter 9 on transition for further details.

There are also a number of other consultations and calls for evidence relating to the framework that are taking place over the same or overlapping timeframes. Please see below for a summary and links to the live consultations.

Publication	Timings
<a href="#">OfS registration fees</a>	w/c 16 Oct – 22 Dec
<a href="#">Designation of data body</a>	w/c 16 Oct – 22 Dec
<a href="#">Designation of quality body</a>	w/c 16 Oct – 22 Dec
<a href="#">Simplifying access to the market: Degree Awarding Powers &amp; University Title</a>	w/c 16 Oct – 22 Dec
Monetary penalties	TBC Dec 2017 – Jan 2018

### Setting the context for reforms

The OfS's regulatory framework does not exist in a vacuum, and to understand it requires some context in terms of its legislative underpinnings in HERA and more broadly in the overall Government strategy for higher education, of which the OfS will be an integral part. As this context is not subject to consultation, this document gives less details on these topics; they are mainly addressed in chapter 1. Those interested in understanding these issues in more detail should refer to:

- The Higher Education and Research Act 2017: <http://www.legislation.gov.uk/ukpga/2017/29/contents/enacted/data.htm>
- White Paper: <https://www.gov.uk/government/publications/higher-education-success-as-a-knowledge-economy-white-paper>
- Green Paper: <https://www.gov.uk/government/consultations/higher-education-teaching-excellence-social-mobility-and-student-choice>

We have also sought to place the reforms in the context of other regulators and their experiences: some examples of these are provided as case studies throughout the document. These case studies set out an approach taken by other regulators as context and in many cases have informed the OfS's approach, either as a model of best practice, or applying a relevant principle, or even as an example to avoid in the context of English higher education. To be clear, the inclusion of these case studies does not mean we are proposing the OfS will take the same approach as the featured regulators; it merely means we have learned from their experiences in some way.

### Informing providers of the proposed approach to change

This consultation document sets out the approach the OfS will take to performing its various functions. To reflect that this document is a consultation, and that the OfS will be considering the responses in detail once it comes into existence in January 2018, we have not sought to provide detailed guidance or information on the

processes that will underpin this approach, apart from in relation to the registration conditions (as set out in the Guidance). Doing so recognises that the detailed guidance on the operationalisation of the regulatory approach, set out in this document, will need to reflect the final regulatory framework, which is to be developed following this consultation.

We have sought to provide as much information as possible on what to expect, in particular for providers, within the constraints set out above. In particular, this document sets out the transitional arrangements involved in the introduction of the new regulator and its framework. Please refer to chapter 9.

### Structure of this document

This document is split into 5 parts:

- Part I: an overview of the OfS's risk-based regulatory approach
- Part II: detail of how the OfS will regulate at the sector level in the interest of students
- Part III: detail of how the OfS will regulate at the provider level in the interest of students
- Part IV: detail of the OfS's other roles and responsibilities
- Part V: three annexes

This is supported by an executive summary, also contained in this document, the Guidance (a separate document) which covers the registration conditions, behaviours and evidence which will underpin the OfS's approach to regulating at the provider level, and the Approach to transition – provider roadmaps (a separate document).

### Questions

For ease of reading, this document has been written to say 'the OfS will' take a certain approach on various matters. While these are presented as statements of fact, the document as a whole sets out a **proposed** approach for the OfS to take. We are seeking views on any and all of these statements (bar the exceptions noted in this navigation section), and welcome views on the proposed approach as a whole or in detail.

Alongside this general invitation for respondents to share their views, questions are posed throughout this document. For ease these are summarised below. Additionally, for those wishing to give views on the more detailed proposed conditions and associated guidance, the Guidance has a series of more specific and detailed questions in relation to individual conditions. The questions below are provided in the order they appear in this document.

## *Part 1*

1. Do you agree or disagree that these are the right risks for the OfS to prioritise?
2. Given all the levers at its disposal, including but not limited to access and participation plans, what else could the OfS be doing to improve access and participation and where else might it be appropriate to take a more risk-based approach?
3. Do you agree or disagree that a new Quality Review system should focus on securing outcomes for students to an expected standard, rather than focusing on how outcomes are achieved?
4. Would exploring alternative methods of assessment, including Grade Point Average (GPA), be something that the OfS should consider, alongside the work the sector is undertaking itself to agree sector-recognised standards?
5. Do you agree or disagree that a student contracts condition should apply to providers in the Approved categories, to address the lack of consistency in providers' adherence to consumer protection law?
6. What more could the OfS do to ensure students receive value for money?
7. Do you agree or disagree that a registration condition on senior staff remuneration should apply to providers in the Approved categories? Are there any particular areas on which you think should the OfS should focus when highlighting good practice?
8. What are your views on the potential equality impacts of the proposals that are set out in this consultation? Please provide any relevant evidence if you can as this will support future policy development.

## *Part 2*

9. Do you agree or disagree that participation in the TEF should be a general condition for providers in the Approved categories with 500 or more students?
10. Do you agree or disagree with the proposed ongoing general registration condition requiring the publication of information on student transfer arrangements? How might the OfS best facilitate, encourage or promote the provision of student transfer arrangements?
11. Do you agree or disagree with the proposed approach to sector level regulation in chapter 2?

## *Part 3*

12. If you are a provider, can you provide an indication of which category you would apply for (under these proposals) and why?
13. The initial conditions should provide reassurance that providers will meet the general ongoing conditions without creating unnecessary barriers to entry. Given this, are the initial conditions appropriate?
14. Do you agree or disagree with the proposed lists of public interest principles in the Guidance, and who they apply to?



15. Do you agree or disagree with the proposed approach on the application of conditions for providers wishing to seek a Tier 4 licence?
16. Do you agree or disagree that paragraph 7 and 8 should be removed from Schedule 2 of the Education (Student Support) Regulations 2011, which lists the types of courses that allow with access to the student support system? If you disagree, are you aware of any courses dependent on these provisions to be eligible for support?
17. Do you agree or disagree with the proposed approach for the benefits available to providers in the different registration categories?
18. Do you agree or disagree with the general ongoing registration conditions proposed for each category of provider (see the Guidance for further detail)?
19. Do you agree or disagree with the proposed approach to risk assessment and monitoring?
20. Do you agree or disagree with the proposed approach on interventions (including sanctions) and do you agree or disagree with the proposed factors the OfS should take into account when considering whether to intervene and what intervention action to take?
21. Do you agree or disagree with the proposed approach the OfS will take to regulating providers not solely based in England?

#### *Part 4*

22. Do you agree or disagree with what additional information is proposed that the OfS publishes on the OfS Register?
23. Do you agree or disagree with the principles proposed for how the OfS will engage with other bodies?
24. Do you have any comments on the proposed exercise of OfS functions in relation to validation, in particular in relation to ensuring that the validation service is underpinned by the necessary expertise and operates in a way that prevents or effectively mitigates conflicts of interest?
25. Does the information provided offer a sufficiently clear explanation of how a provider will apply for registration in the transitional period and what the consequences of registration are in this period?

#### *Annex C*

26. Do you have any comments on the above proposal of how the OfS will act as the principal regulator for exempt charities?
27. Provided that the Secretary of State considers OfS regulation is sufficient for these purposes, should exempt charity status apply to a wider group of charitable higher education providers? In particular, considering that providers in the Approved categories will be subject to conditions relating to Financial Sustainability, Management and Governance, and the provision of information (as set out in the Guidance), do you have any views on whether the OfS's proposed regulation of providers in these categories would be sufficient for the purposes of it carrying out the functions of Principal Regulator?

# About this consultation

## Issue date

The consultation was issued on 19 October 2017.

## Enquiries

If your enquiry is related to the policy content of the consultation you can contact the team on 07919 565992 for the overall Regulatory Framework and ask for Catherine Gregory. Or email: [HERA.CONULTATIONS@education.gov.uk](mailto:HERA.CONULTATIONS@education.gov.uk)

If your enquiry is related to the DfE e-consultation website or the consultation process in general, you can contact the DfE Ministerial and Public Communications Division by email: [Coordinator.CONULTATIONS@education.gov.uk](mailto:Coordinator.CONULTATIONS@education.gov.uk) or by telephone: 0370 000 2288 or via the [DfE Contact us page](#).

## Additional copies

Additional copies are available electronically and can be downloaded from [GOV.UK DfE consultations](#).

## The response

The results of the consultation and the Department's response will be [published on GOV.UK](#) in Spring 2018.

## Respond online

To help us analyse the responses please use the online system wherever possible. Visit [www.education.gov.uk/consultations](http://www.education.gov.uk/consultations) to submit your response.

### **Other ways to respond**

If for exceptional reasons, you are unable to use the online system, for example because you use specialist accessibility software that is not compatible with the system, please contact us.

### **By email**

[HERA.CONULTATIONS@education.gov.uk](mailto:HERA.CONULTATIONS@education.gov.uk)

### **By post**

Catherine Gregory  
Department for Education  
Sanctuary Buildings  
20 Great Smith Street  
London  
SW1P 3BT

### **Deadline**

The consultation closes on 22 December 2017.

### **Confidentiality and data protection**

Responses to this consultation, including names (and supporting evidence), will be made public, unless respondents specifically request confidentiality.

Respondents who wish for their responses to remain confidential should clearly indicate this when responding online, and explain the reasons for confidentiality. Any confidentiality disclaimer that may be generated by your organisation's IT system will be taken to apply only to information in your response for which confidentiality has specifically been requested.

Respondents should be aware that confidentiality cannot always be guaranteed. For example, responses, including personal information, may be subject to publication or release in accordance with the access to information regimes (in particular, the Freedom of Information Act 2000, the Data Protection Act 1998).

## Executive Summary

- i. The Office for Students (OfS) is a new regulator for English higher education, replacing the Higher Education Funding Council for England (HEFCE) and the Office for Fair Access (OFFA). It will adopt a **bold, student-focused, risk-based approach**, reflecting the significant changes to higher education of the last 25 years and anticipating the change that will undoubtedly continue in the next quarter century and beyond.
- ii. The OfS's primary aim will be to ensure that the English higher education sector is delivering positive outcomes for students – past, present, and future – and this ambition will run through the regulatory framework and the organisation as a whole. The OfS will look to ensure that all students, from all backgrounds (particularly the most disadvantaged), can access, succeed in, and progress from higher education.
- iii. Everyone should be able to study at an institution that meets their needs and aspirations. All students should be supported to succeed in their studies. And the sector must deliver on the promise of higher education as an engine for social mobility, and a gateway to a better life for those who undertake it.
- iv. To ensure that the sector – as individual institutions, and as a system – delivers positive outcomes for all students from all backgrounds, the OfS will focus on managing four risks, corresponding to each of its four objectives, as set out below.

### Box A – Current Sector

There is a wide variety of providers currently listed on the register of HEFCE, the largest of the current higher education regulators, and this only includes providers seeking public funding (including student finance) of some sort. There are 775 providers on the HEFCE register, including:

171 School Centred Initial Teacher Training providers ('SCITTs')  
189 directly funded Further Education Colleges (FECs)  
30 FECs in sub-contractual arrangements  
140 'Alternative Providers' (APs) in sub-contractual arrangements  
104 APs with current Specific Course Designation  
132 HEFCE funded Higher Education Institutions.

This data was correct as at 27 September 2017

### Box B - Risks the OfS will address

The OfS will have four primary objectives:

- objective 1: all students, from all backgrounds, are supported to access, succeed in, and progress from, higher education
- objective 2: all students, from all backgrounds, receive a high quality academic experience, and their qualifications hold their value over time in line with sector-recognised standards
- objective 3: that all students, from all backgrounds, have their interests as consumers protected while they study, including in the event of provider, campus, or course closure
- objective 4: that all students, from all backgrounds, receive value for money

The OfS will seek to mitigate the risk that each of these four objectives is not met.

- v. The OfS will be a market regulator, with two elements to its regulatory approach to mitigating the risks outlined above:
- at the '**sector level**' the OfS will focus on creating the conditions for competition, continuous improvement and informed choice within the sector, supplemented by tools to encourage and support activity that addresses market failure
  - at the '**provider level**', the OfS will regulate individual providers to protect all students, from all backgrounds, focusing on the risks of the four objectives above not being met. The OfS will act proportionately, focusing its attention and resources on the most risky areas and aspect of provision, including where the market alone will deliver insufficient outcomes for both students and society (such as with access and participation). At the provider level, the OfS will be clear on what outcomes are expected at a minimum (but high) baseline, but will not tell providers how to meet this expectation, nor seek to regulate to continually improve providers above this baseline. Whilst the OfS will seek a collaborative, plain-speaking relationship with providers, it will be unapologetic and decisive wherever it needs to intervene.
- vi. The effect of the proposed approach of the OfS set out in this consultation will be:
- a. a student focus – regulation will primarily protect students (especially the most disadvantaged), not providers

- b. clarity – all registered providers will be primarily regulated by one body, with a clear path for new entrants
  - c. consistency – there will be a single register: students will know the baseline requirements they can expect for each category of provider, and providers will compete on a level playing field
  - d. proportionality – provision that present lower risks for students will be left to flourish, whilst less secure elements of provision will face greater scrutiny
  - e. competition – the market will be shaped so that choice and competition will drive innovation and improvement, with disparate models of provision able to compete freely, supported by direct regulation of providers where there is market failure, as in the case of access and participation
- vii. This will be a marked shift from the current approach to regulation.

### **The OfS's general duties**

- viii. The approach outlined above is underpinned by HERA – the recent legislation from which the OfS derives its powers.
- ix. The OfS is an independent body, exercising those functions conferred on it through HERA while having regard to:
- a. protecting institutional autonomy
  - b. promoting quality, greater choice and opportunities for students
  - c. encouraging competition while recognising the benefits of collaboration between providers
  - d. promoting value for money
  - e. promoting equality of opportunity in access and participation
  - f. using its resources in an efficient, effective and economic way
  - g. reflecting best regulatory practice

(These are referred to as the OfS's 'general duties' and are set out in Section 2 of HERA).

- x. Certain elements of the OfS’s activity, such as the imposition of individual ongoing registration conditions, may focus in particular on one or more of these. Equally important, however, is that the OfS will consider all of these in the decisions it makes across its functions. While an initiative or process may focus on one of these outcomes in particular, the OfS must nevertheless take the others into account when making decisions.
- xi. For example, the general duty on equality of opportunity might be seen as delivered through the work of the Director for Fair Access and Participation and the access and participation plans and statements and these are obviously important tools. But beyond this, the OfS will take access and participation into account across all of its activity and decisions.
- xii. In exercising its functions, the OfS will also need to have regard to its regulatory framework, once finalised and published, as well as guidance issued by the Secretary of State.
- xiii. The OfS is committed to adopting and contributing to best regulatory practice, including complying with the Regulators’ Code, and in developing the regulatory framework, we have consulted with experts, drawn on best practice, and learned from the latest in regulatory theory. And just as the sector will continue to change, the OfS will ensure that it is not static and will continue to be self-critical in its approach to regulation.
- xiv. This consultation, conducted by the Government on behalf of the OfS, sets out the OfS’s proposed regulatory approach, and gives the opportunity for students, providers and others to share their views. It is a bold, ambitious vision, and we look forward to a robust, critical, and constructive set of responses. The rest of this executive summary sets out the consultation’s central proposals, and finishes with a table setting out the differences between the current and future regulatory regimes.

## Overview of the regulatory approach

### Sector level regulation

- xv. Regulating the sector as a whole (chapter 2):
  - a. The OfS will work with the Designated Data Body (DDB) to coordinate, collect and disseminate **information for students**, to help them make the choices that are right for them, to drive competition around student outcomes, such as graduate employability, and to support and raise the profile of mechanisms that allow student transfer

- b. The OfS will **remove unnecessary barriers to entry** for high quality new providers, increasing diversity and competition in the sector for the benefit of students
- c. The OfS will regulate to enable and **create space for innovation**, including in teaching and learning, whilst ensuring baseline requirements on quality and other risks to students are met
- d. The OfS will champion issues and share best practice, unafraid to **speak out on behalf of students**, and in particular will promote transparency around securing value for money for students and taxpayers, and sector accountability including for access and participation
- e. The OfS will use the **teaching grant** strategically, in line with Government priorities, such as supporting STEM as well as access and successful participation for the most under-represented and disadvantaged students

### Provider level regulation

- xvi. Registration and initial risk assessment (see chapters 3-5):
  - a. All registered providers will be on a **single register** and part of the same regulatory system, with a single gateway. This will replace the current system, which differentiates by provider form rather than a focus on the student. Providers will be able to register as Approved (fee cap), Approved or Registered basic. The first two categories, collectively referred to as the 'Approved categories', will generally be subject to the same conditions, ensuring all students can expect a minimum (but high) baseline; the main different requirement between them is that Approved (fee cap) will be required to have an access and participation plan approved in order to charge fees within the higher limit (all other providers in the Approved categories will be required to publish an access and participation statement). Registered basic providers will have a more basic form of regulation which aims to formally recognise that they are providing higher education, giving clarity to students and employers (see Annex A).
  - b. To register, providers will have to demonstrate that they meet a set of **initial registration conditions** to ensure they meet the high bar for entry (see chapter 4, and the Guidance) and will be subject to a **risk assessment**, looking at whether they will be able to continue to meet their conditions. The assessment of providers will look at whether they can achieve outcomes rather than their processes, and will be designed to be able to be applied to providers without a track record.



- c. The OfS will decide, based on the risk assessment referred to above, which **general and specific ongoing conditions** should apply to the provider. Conditions are the primary tool that the OfS will use to regulate individual providers and will be used to ensure providers meet **baseline requirements** linked to the four student objectives (and corresponding risks), rather than to drive continuous improvement. The exception to this will be access and participation, within which the baseline requirement for an access and participation plan will incorporate continuous improvement, as outlined in chapter 5.
- d. The OfS will also use the previously mentioned risk assessment to decide if any **enhanced monitoring** is needed in relation to any risks identified through the risk assessment.

xvii. On the register (see chapter 5):

- a. All providers will be monitored through **lead indicators, reportable events** and **other intelligence** such as complaints. These will be used to identify early and close-to-real-time warnings that the risk of a provider not meeting each of its ongoing and specific registration conditions is changing. Regulatory decisions will not be taken on the basis of these indicators, but they will identify areas for the OfS to assess in more depth. The OfS will respond swiftly with interventions (which may include sanctions) if deemed necessary by the assessment.
- b. In addition, the OfS will use a **random sampling approach**, assessing a small proportion of providers (e.g. 5%) as to whether a provider is continuing to meet the general ongoing conditions of registration. This approach will be used to iterate and improve the effectiveness of the OfS's monitoring system, and to act as an incentive for providers to meet their conditions on an ongoing basis.

xviii. Interventions and sanctions (see chapter 5, part E):

- a. If a **breach is identified or appears likely**, the OfS will consider whether it should apply additional specific ongoing conditions on the provider, in order to manage the risk to students. It will also consider enhanced monitoring on an ongoing basis.
- b. If a **breach** of a specific or general ongoing condition is identified, the OfS will consider the use of **formal sanctions** – monetary penalties, suspension or deregistration – applying them decisively and unapologetically where needed. Which it uses will depend on a range of factors as set out in Annex B.

**Table 2 - differences between the current and future regulatory regimes**

	<b>Current system</b>	<b>Proposed system under the OfS</b>
<b>Focus</b>	<b>Provider</b> focused	<b>Student</b> focused, regulating to protect students not providers
<b>Remit</b>	Core <b>split</b> between HEFCE funded providers and alternative providers regulated by DfE  Access and participation considered separately	<b>All registered</b> English HE providers regulated by a single body providing regulatory clarity and a level playing field  <b>Access and participation embedded</b> across regulatory approach
<b>Entry and ongoing requirements</b>	<b>Multiple approaches, driven by provider form:</b> <ul style="list-style-type: none"> <li>• <b>Four different gateways</b> for market entry with different criteria, evidence requirements, and decision-makers</li> <li>• Requirements include focus on processes (what providers ought to <b>do</b>) and track record</li> </ul>	<b>A single consistent approach, driven by student risk:</b> <ul style="list-style-type: none"> <li>• <b>Single entry</b> to the regulated sector driven by a core set of requirements linked to <b>objectives for the student</b></li> <li>• Requirements focused on student outcomes (what providers need to <b>achieve</b>), articulated as baselines which all students can expect from their provider</li> </ul>
<b>Monitoring</b>	Blanket use of <b>cyclical assessments</b> of providers, regardless of regulatory risk	<b>Regulation proportionate to risk</b> – providers that present lower risks for student will be left to flourish, whilst less secure provision will face greater scrutiny
<b>Engagement</b>	<b>Universal, routine, regulator-led engagement</b> and support for all providers across full range of institutional issues and interests, combined with increased frequency/intensity where needed	<b>Engagement in response to indications of increased risk to students</b>  Focus on maintaining an open and trust-based dialogue with responsible provider
<b>Regulatory levers</b>	Access or restriction of <b>access to funding</b> in respect of 'Higher Education Institutions' and removal of designation of student support for both 'Higher Education Institutions' and 'Alternative Providers'	Creation of a <b>spectrum of sanctions</b> to reflect the diversity of providers and enable a spectrum of responses based on risk, regardless of provider type
<b>Continuous improvement</b>	Operating model for regulation <b>seeks evidence of continuous improvement</b>	Operating model does <b>not seek to directly regulate providers to drive continuous improvement</b> , which is instead driven by student choice and competition (with the exception of areas of market failure, such as access and participation)

## PART I – Overview

### Chapter 1 – the OfS’s risk-based approach

1. The OfS will be a risk-based regulator. Its activity as a regulator will be firmly focused on addressing a small number of risks, primarily to students (young and mature, undergraduate and postgraduate, full time and part time, domestic and international; students, in all their diversity). These risks are set out in Box C.

#### Box C

The OfS will have four primary objectives:

- objective 1: all students, from all backgrounds, are supported to access, succeed in, and progress from, higher education
- objective 2: all students, from all backgrounds, receive a high quality academic experience, and their qualifications hold their value over time in line with sector-recognised standards
- objective 3: that all students, from all backgrounds, have their interests as consumers protected while they study, including in the event of provider, campus, or course closure
- objective 4: that all students, from all backgrounds, receive value for money

As a risk-based regulator, the OfS will seek to mitigate (though not eradicate) four risks – the risk that each of these four objectives is not met.

As it does so, the OfS will also seek to mitigate risk that the sector does not deliver value for money for taxpayers and citizens (who are directly involved through the allocation of public grant funding, research funding by UKRI, and the public subsidy to the student finance system). It will also do so while recognising the needs of students from disadvantaged backgrounds, who are less likely to access, succeed in, and progress successfully from higher education, even once their entrance characteristics are taken into account.

The OfS will also work with UKRI to ensure that the reciprocal risk around the sustainability of providers which contribute to the vibrancy of the research base is monitored and mitigated appropriately. The flow of information between the two organisations will be crucial to achieving this.

***Question: Do you agree or disagree these are the right risks for the OfS to prioritise?***

2. These risks will inform the activity at both sector level and provider level.
3. Provider level regulation will not be used to drive continuous improvement. It will be for autonomous, individual providers to decide for themselves the extent to

which they wish to offer provision that extends beyond the baseline. The impetus to do so will be driven by student choice and competition rather than direct regulatory intervention.

4. Regulation of individual providers will not be used to deliver sector-wide goals: for instance, if the OfS were concerned about the paucity of STEM or modern foreign language provision in a rural area, it would take sector level action in that area (e.g. by providing funding incentives for innovation) but would not undermine institutional autonomy by using its regulatory levers to require an individual provider to keep STEM or modern foreign language courses open.
5. This general approach does not apply to access and participation. In this case, competition, choice, and market mechanisms alone are not able to deliver the outcomes needed for students and society, so regulation of individual providers will be used to drive improved access and participation.
6. At both levels, the OfS will act proportionately, focusing its resources on what matters to students and taxpayers and ensuring action is targeted where needed. Providers will be free from unnecessary regulation, and those that clearly meet high minimum requirements will receive much less regulatory contact than in the past. However, where the student interest is at risk, the OfS will act swiftly and decisively. The OfS will not stray away from hard edged regulation where needed; instead its approach will incorporate the full spectrum of responses.

### **Categories of provider**

7. The OfS will operate a single register (a public list of providers that are regulated by the OfS), creating a level playing field and avoiding – wherever possible – different providers being regulated by different bodies. There will be categories within the register: each category has a different level of eligibility for public funding (and other benefits) with associated conditions, as set out below. In practice, Approved and Approved (fee cap) are far closer to each other in terms of regulatory requirements than Registered basic is to either, so for simplicity we often refer to these together in this document as ‘Approved categories’.

<b>The Registration Categories</b>		
<p><b><i>Registered basic</i></b></p> <p>for providers who want to be officially recognised as offering higher education courses</p> <p>no eligibility for student finance or grant/research funding, Degree Awarding Powers/University Title or Tier 4 licence</p>	<p><b><i>Approved</i></b></p> <p>for providers wishing to access to student finance, Degree Awarding Powers/University Title or Tier 4 licence</p> <p>no fee cap or eligibility for grant/most research funding</p>	<p><b><i>Approved (fee cap)</i></b></p> <p>for providers wishing to access grant/research funding, student finance, Degree Awarding Powers/University Title or Tier 4 licence</p> <p>fee cap and access and participation plan (where charging the higher fee amount)</p>
<i>“Registered basic”</i>	<i>“Approved”</i>	<i>“Approved (fee cap)”</i>
	<span style="border-top: 1px dashed black; border-bottom: 1px dashed black; display: inline-block; width: 80%;"></span> <i>“Approved categories”</i>	
<span style="border-top: 1px dashed black; border-bottom: 1px dashed black; display: inline-block; width: 90%;"></span> <i>“Registered”</i>		

### Summary of the OfS’s response to each of the four student objectives and corresponding risks

The paragraphs below cover the OfS’s response to each of the four primary student objectives and their corresponding risks, at both the sector and the provider level.

#### Objective 1: all students, from all backgrounds, are supported to access, succeed in, and progress from, higher education

8. Widening access and promoting the success of all students who have potential to benefit from higher education, including those from disadvantaged backgrounds and groups under-represented in higher education, will be at the heart of the OfS’s remit. It will have a duty which relates to equality of opportunity across the whole student lifecycle; with the aim of ensuring that students from disadvantaged and traditionally under-represented backgrounds can not only access, but successfully participate in and progress from higher education too. The OfS will intervene at the provider level in this area; market forces alone will not be sufficient to deliver the change needed. The OfS will also have a duty relating to student choice and opportunities, which it will consider in terms of a range of models of higher education – including new providers, work-based study, accelerated programmes and flexible provision for adults – which will facilitate higher education opening up to under-represented groups.

9. The OfS will replace both HEFCE and OFFA, integrating access and participation into the regulatory approach, and will have a dedicated champion, the Director for Fair Access and Participation (DFAP), who will be a member of the OfS Board. As well as the work of the DFAP, and specific elements of the regulatory framework, the OfS will consider and support the most disadvantaged students throughout all of its work, ensuring a mutually reinforcing approach across all its activities.
10. All Approved providers will be set general ongoing conditions, requiring access and participation plans for Approved (fee cap) providers wishing to charge tuition fees up to the higher amount, and access and participation statements for other Approved (fee cap) providers, and for Approved providers. And by shining a light on the problem, the transparency condition will expose and enable focus to be given to those higher education providers who need to do more to support students from all backgrounds to access, succeed in, and ultimately progress from, higher education.
11. The OfS will not impose targets for widening access and participation activities on individual providers, in line with its duties in HERA designed to protect academic freedom and institutional autonomy. Instead, drawing on the lessons learned by OFFA and the Director of Fair Access (DFA), the OfS and the DFAP will work with providers to ensure they are making real progress on access and participation for disadvantaged groups; if they do not, the OfS will not hesitate to use sanctions where appropriate. The OfS will also be able to drive improvements across the sector by providing advice on good practice on access and participation, expecting providers to consider new evidence and innovative ideas when developing their activities.
12. In order to ensure better outcomes for both current and prospective students, the relationship between the higher education sector and the schools and further education systems will need to be strengthened. The establishment of the OfS and the new regulatory framework presents a unique opportunity to take a fresh look at our approach to managing these important transition points between stages of learning for an individual and their whole educational experience. These relationships between sectors are critical, not least when it comes to widening access and successful participation.
13. There are already many higher education providers playing an active role in schools and colleges in order to improve the prior attainment of pupils from disadvantaged backgrounds. The new regulatory regime creates the opportunity to spread these ties further and deeper, in service of students accessing, succeeding in, and progressing from, higher education.

***Question: 3. Given all the levers at its disposal, including but not limited to access and participation plans, what else could the OfS be doing to improve access and participation and where else might it be appropriate to take a more risk-based approach?***

**Objective 2: all students, from all backgrounds, receive a high quality academic experience, and their qualifications hold their value over time in line with sector-recognised standards**

14. The OfS's approach will ensure that students, irrespective of background or type, are able to benefit from excellent teaching and receive a high quality academic experience. The OfS will use baseline requirements for provision at the provider level to ensure a high quality baseline, and will support new entry (with a high bar) and increased choice and competition to encourage continuous improvement in and diversity of student experience.
15. There will be three initial and general ongoing conditions on quality that will apply to all providers in the Approved categories. These conditions will be focused on outcomes, ensuring that providers have the autonomy to embrace innovation and determine their own processes to drive up quality.
16. In parallel to this consultation, the UK wide Standing Committee for Quality Assessment (UKSCQA) has issued a consultation on revised expectations for the Quality Code. The proposals in that consultation are designed to reflect the importance of securing outcomes for students, rather than focusing on how these are achieved. The consultation explores how the UK Quality Code will continue to be applied across England and the Devolved Administrations, whilst reflecting the different regulatory approaches.
17. The UKSCQA is working to conclude its consultation, and to finalise a revised set of expectations during Spring 2018. This revised Code, if suitable, will provide the basis for a new approach to Quality Review that will be designed and implemented by the Designated Data Body (DQB). If the revised Code is not suitable, the OfS will task the DQB to work with the sector to design and implement a Quality Review system that is underpinned by the quality and standards initial registration conditions and behaviours, rather than the Code. The new Quality Review system will provide a sound basis for the assessment of the quality and standards conditions, and be able to evolve with the increasing diversity of providers.
18. To facilitate greater diversity in provision and student experience, the OfS will make it easier for high quality providers to enter the sector. The register will be a

single gateway for entry, with a high bar and clear requirements for potential entrants. The OfS will also reduce the emphasis on a provider's track record, which risks shutting out high quality and credible new providers.

19. The Teaching Excellence and Student Outcomes Framework (TEF) will go beyond the OfS's baseline requirements, incentivising excellent teaching and giving all students better information to help them choose the higher education experience that will be right for them. It represents a significant change in the information landscape for higher education, the value of which will be maximised as subject-level TEF is implemented, leading to better informed decisions and a sharper feedback loop for individual departments.
20. Additionally, we are asking through this consultation if participation in the TEF should be included as a general ongoing condition for providers above a certain size in the Approved categories. Doing so will help students make more informed choices, as well as driving providers to compete on the quality of the teaching, further driving improvement in academic experience above the required baseline.
21. The sector is responsible for setting standards so that qualifications hold their value over time. Students work hard to earn their degrees and have the right to expect reliable standards between providers and over time, including by the sector addressing grade inflation. To make sure students' interests are protected in the long term, the Government has called upon the sector to define standards above the threshold (such as degree classifications) such that a student can have confidence that their qualification is of a recognised standard beyond pass/fail.
22. The OfS will also work to protect the interests of students in the long term. The risk of inconsistent or declining standards will be addressed by an initial and general ongoing condition that will apply to all providers in the Approved categories.
23. At the sector level, the OfS will ensure students have the information they need on the value of their qualifications. The OfS will annually analyse and arrange for the publication of information on grade inflation, directly challenging the sector where there is clear evidence of grade inflation.
24. It was recently announced that the TEF will also include a new grade inflation metric on the proportion of students awarded different classifications over time. This will ensure providers who are genuinely tackling grade inflation are recognised and hold to account those who are not. The TEF will therefore provide a counterweight to traditional ranking systems, some of which inadvertently encourage grade inflation by giving providers credit for the number of high-class degrees they award without further scrutiny.



25. As a crucial part of protecting the quality of higher education, the OfS will go further than ever before to promote freedom of speech. Details of this are set out in Box D below.

#### **Box D – Freedom of Speech**

Freedom of speech within the law is the cornerstone of higher education. It is important on many levels, but perhaps the most important aspect of it is that it develops and encourages a culture of vigorous thought and debate. It allows for conventional wisdom to be rigorously challenged. Students develop the ability to think critically, to challenge extremist narratives, and put forward new and controversial ideas. These are essential skills in a modern, forward facing society.

In a democratic country, we strongly believe it is in the public interest to preserve and encourage freedom of speech within the law. This is why the responsibility of universities to actively secure freedom of speech was enshrined in legislation: the Education (No.2) Act 1986 which provides a statutory duty to secure freedom of speech in higher education. We went further this year – HERA extended this duty further to include all providers registered with the OfS.

Our legislation is about valuing lawful free speech and ensuring those that wish to engage in lawful debate can do so. There is no place for those who hold unlawful extremist views or who seek to undermine the freedom of others. We will continue to ensure that this extremism never goes unchallenged. This is why our legislation also includes an express duty to ensure, so far as reasonably practicable, that the use of any of the provider's premises are not denied to anyone on the grounds of their beliefs, views, policy or objectives. This duty also extends to the organisation and conduct of meetings and activities taking part on premises occupied by the students' union.

Further to this, during the passage of HERA the Government committed to consider what more it could do to emphasise the importance of freedom of speech in higher education. One of the ways in which we propose to do this is through a public interest principle. This consultation includes such a public interest principle, which states that the governing body of an institution must take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured within its institution. This public interest principle will form part of the public interest governance condition which we are proposing should apply to the Approved categories.

The OfS will use ‘indicative behaviours’ to assess compliance with the principles; these are set out in the Guidance on registration conditions. With regard to free speech, for example, one behaviour that would indicate compliance would be to have a freedom of speech code of practice. This should set out the procedures which members, students and employees should follow in relation to meetings or activities, and the conduct which is expected of those individuals. Some of the best examples set out clearly what does and does not constitute reasonable grounds for refusal of a speaker, and the disciplinary actions which would follow a breach of the code of practice. A behaviour that might indicate non-compliance would be where a provider fails to abide by its own freedom of speech procedures.

If a provider fails to comply with the freedom of speech principle then, as with all public interest principles, this would breach the registration condition. The OfS has a range of interventions at its disposal, such as imposing specific conditions or formal sanctions against the provider including monetary penalties, suspension from the register or deregistration. The OfS can also publicly call out providers who fail to comply with this principle and protect freedom of speech.

As a result of the changes we propose in this consultation, our higher education will be second to none in ensuring that students can take part in rigorous, open debate and our providers will be the home of innovative thought.

As George Orwell said “If liberty means anything at all, it means the right to tell people what they do not want to hear.”

***Question: Do you agree or disagree that a new Quality Review system should focus on securing outcomes for students to an expected standard, rather than focusing on how outcomes are achieved?***

***Question: Would exploring alternative methods of assessment, including Grade Point Average (GPA), be something that the OfS should consider, alongside the work the sector is undertaking itself to agree sector-recognised standards?***

**Objective 3: that all students, from all backgrounds, have their interests as consumers protected while they study, including in the event of provider, campus, or course closure**

26. Prospective students are subject to the same behavioural biases as everyone else, and these can influence their decisions about higher education. Even before

entering higher education, there is a need to protect their interests as consumers; the OfS, in collaboration with others, will work to ensure prospective students have the information they need to make the choices that are best for them.

27. Once in higher education, the OfS will use several registration conditions to protect students in the case of provider closure. Perhaps most importantly, there will be a registration condition on all providers in the Approved categories requiring them to publish and comply with student protection plans that have been agreed by the OfS. There are also other relevant registration conditions, such as those on financial viability and sustainability, and governance, which are designed to ensure providers are stable and sufficiently well managed to deliver the courses their students have signed up for. Whilst these conditions will help mitigate the risk of any and all of the four objectives not being met, they are of particular importance to prevent sudden, unplanned market exit.

28. Consumer rights are not limited to protecting students from the very worst situations where their provider or course closes entirely. It is also important that students understand what they can expect of their providers in terms of issues such as teaching hours and support available. Box E below gives an example of how the OfS will deliver on this through setting a registration condition on student contracts.

#### **Box E – Student contracts**

It is critical that students know their rights, are given access to good information, and have fair contracts that enable them to take action if the reality of their experience does not match what was advertised. Providers already have access to guidance which helps them meet their obligations under consumer law, including advice on provision of quantifiable contractual information. For example, the Competition and Markets Authority (CMA) has published its guidance *Higher education: consumer law advice for providers*.

The guidance in this consultation focuses on three aspects of students' rights as consumers:

- Students should have access to clear, accurate, specific and timely information at all stages of their higher education experience. This includes ensuring students have access to specific information on course content and structure and total course costs. This is crucial for students who can use it to make informed decisions about their higher education experience

- Students should also know what terms make up their contracts with providers. These should be understandable, fair and transparent, and not unfairly balanced towards the provider
- If things do go wrong, students should be able to access their provider's complaint handling processes and practices, which should be clear and fair

However, although progress has been made, it is clear that not all providers are following this guidance consistently. A compliance review of a range of providers published by the CMA in 2016 found mixed practice and raised concerns over the speed of progress providers were making to ensure they were making the necessary changes to fulfil their obligations under consumer law. Additionally, inconsistent practice was found regarding: accessibility of terms; a lack of transparency over course costs; use of terms which might allow too wide a discretion to vary course content; and provisions in complaints processes that put barriers in the way of students.

With a view to ensuring students obtain value for money, the OfS will use its powers to create an environment in which providers fully meet their obligations to students as consumers, and students are able to build an understanding of their corresponding rights.

As a first step, the OfS will press providers to take appropriate steps to comply with consumer law in a way that is consistent across the sector.

The OfS will set a condition that provider should demonstrate that, in developing the policies and procedures governing their contractual and other relationships with students, they have given due regard to relevant guidance as to how to comply with consumer law. The CMA's published guidance for higher education providers will be recommended by the OfS. This will embed across the system student contracts that are clear, quantifiable and fair; details of this condition are in the Guidance.

There is not an equal power balance in relationships between students and providers. In addition to this registration condition, the OfS will take further action to address student value for money concerns relating to their higher education experience. This could include further consultation on student contracts and student consumer rights, for example on whether the OfS should play an enforcement role, and whether students would benefit from the use of model contracts with providers.

***Question: Do you agree or disagree that a student contracts condition should apply to providers in the Approved categories, to address the lack of consistency in providers' adherence to consumer protection law?***

**Objective 4: that all students, from all backgrounds, receive value for money**

29. Providers have a responsibility to ensure that students are able to secure value for money for their investment in their education, just as students have a responsibility to engage with their own learning and take the opportunities higher education offers.
30. Value for money runs through all of the risks highlighted, from whether a student receives a good quality education through to the ongoing value of the qualification they achieve.
31. Transparency is also central to promoting value for money for students and protecting their rights, shining a light on provider activities and ensuring they are held to account. Students must be assured that the investment they are making in their future is worthwhile, and will be able to challenge institutions that do not deliver on their commitments.
32. The OfS will also use registration conditions to make sure governing bodies are accountable for promoting value for money. Under the management and governance condition, providers in the Approved categories will be expected to be demonstrably responsible for operating openly, honestly, accountably and with integrity, and will be required to publish a statement on the steps they have taken to ensure value for money for students and taxpayers which provides transparency about their use of resources and income. Providers should design this statement to allow students to see how their money is spent, following examples from other sectors, such as Local Authorities publishing breakdowns of how Council Tax is spent. This will facilitate provider accountability, enable public scrutiny and allow students to make sure they are getting what they pay for. Where there are substantial concerns the OfS may carry out an efficiency study to scrutinise whether a provider is providing value for money to both its students and the taxpayer.
33. In addition, providers in receipt of grant funding must comply with an additional principle in relation to regularity, propriety and value for money, to ensure that providers act prudently in the administration of public resources, and secure value for public money.
34. The OfS will also act on individual issues where there are concerns that value for money for students is not being delivered across the sector, working where

appropriate with sector bodies, Government or both. Box F below gives one example of this, on senior staff pay.

**Question: What more could the OfS do to ensure students receive value for money?**

#### **Box F – Senior staff remuneration**

Senior staff pay has increased significantly over recent years. In 2015/16, the median salary of a vice-chancellor in the UK was 6.4 times more than that of the average higher education institution staff member.<sup>9</sup> In the same year, a vice-chancellor's average remuneration package (including other benefits such as bonuses and pension contributions) of was over £280,000. The highest paid vice-chancellor received £451,000.<sup>10</sup>

The Government has consistently used its annual grant letter to HEFCE to call on universities and their remuneration committees to exercise restraint on senior staff pay.

Higher education providers are autonomous institutions, and they are solely responsible for setting the salaries of their staff. However, the taxpayer is the sector's most significant single funder and there is a legitimate public interest in their efficiency, including of senior staff pay. Increasing salaries divert money away from a provider's core mission of teaching and research. Exceptional pay can only be justified by exceptional performance.

There will be a new ongoing registration condition requiring providers to publish the number of staff paid over £100,000 per annum, and to explain their justification for pay above £150,000. More detail is provided in the Guidance.

Arrangements will be made for the publication of data on senior staff remuneration, including in relation to protected characteristics such as gender and ethnicity. Where issues with senior staff pay lead to substantiated concerns over governance, the OfS will be able to arrange for efficiency reviews into the providers as set out at chapter 5.

The OfS will be working alongside sector bodies to improve performance. Government has called on the sector to work through the Committee of University Chairs to develop and

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<sup>9</sup> Source: Universities and Colleges Employers Association

<sup>10</sup> Source: Times Higher Education Vice-Chancellor Pay Survey 2017

introduce a new Remuneration Code. This code should focus on encouraging greater independence of remuneration committees, the publication of the pay ratio of top to median staff pay, and explanations of top pay increases that are greater than increases in average pay.

***Question: Do you agree or disagree that a registration condition on senior staff remuneration should apply to providers in the Approved categories? Are there any particular areas on which you think should the OfS should focus when highlighting good practice?***

### **Risk-based approach to interaction with providers**

35. The risk-based approach is also central to how the OfS will interact with providers. The purpose of the OfS's engagement and conversations with an individual provider is to allow the OfS to make good regulatory decisions about managing any risks associated with that provider; it is not to develop the OfS's understanding of the provider 'just in case', to provide support for improvement activities or to seek, outside of the risk of the provider breaching its conditions, to guide the provider to take actions the OfS would like to see. The OfS's role is regulating directly on behalf of students for the benefit of higher education as a whole, balancing the interests in section 2(1) of HERA, rather than to support or protect individual providers.
36. The OfS will seek open and trusting relationships with providers, but dialogue will focus on specific regulatory issues rather than the circumstances and activities of the provider more generally. Providers will be expected to flag actual/potential breaches, or serious risks of these breaches occurring, and academic and professional staff will be a vital part of the entire approach; providers and the OfS will need to draw on their extensive contextual knowledge and understanding of students to deliver the four student objectives. Providers should not, however, use the OfS to replace their own governance or to make decisions for them: seeking 'permission' for decisions, unless required by a specific condition, will be taken as a sign of weak governance.
37. Similarly, the monitoring and assessment of providers will avoid detailed and burdensome assessments or ad hoc demands for information where there is not a justification for this in terms of risk of breaching conditions (and thus of risk to students). This means that the OfS will not undertake routine reassessment of providers, either along the lines of Annual Provider Review or of annual redesignation. Instead its approach will use data and intelligence to identify where further scrutiny is needed to combat the risks outlined above.
38. This approach will not translate into constant interventions by OfS to ask providers to explain every shift or downturn in the data. Before even informal interventions, OfS will apply the test of whether the change – alone, in

combination with other indicators or as part of an ongoing trend – indicates a real risk of a baseline requirement being breached. If not, no formal or informal intervention will be triggered, although the data may remain relevant to the providers' trend data and to the OfS's understanding of the sector as a whole. Overall low risk providers should see a significant reduction in their regulatory burden.

39. For instance, the OfS is likely to use certain aspects of the National Student Survey as a lead indicator on quality. If a provider near the baseline on quality saw significant or repeated deterioration on this indicator this would probably trigger the OfS to investigate further. If, on the other hand, a Gold rated TEF provider saw a dip in this indicator, the OfS would be less likely to investigate. In this case, even if a falling indicator represented a real reduction in teaching quality, it's likely that the provider would remain above the baseline quality expected by the OfS, and therefore the OfS would not want to act. Instead, the OfS would rely on the market incentives to improve teaching quality; the provider's TEF rating might be affected in its next assessment, and in any case the provider would likely seek to remain competitive by improving their offer to students.
40. The OfS and its staff will interact with all the diverse aspects of the higher education sector, always acting in the student interest. The OfS will be self-aware and, drawing from behavioural science, protect itself against the risk of internal biases and the resulting provider capture that can ensue. Financial viability and sustainability, for instance, should be evaluated against the same standards regardless of the age or reputation of the provider being considered. The OfS will, accordingly, design its internal processes to prevent the undue influence of its own preconceptions.

### **The OfS's approach to information**

41. To allow it to take a risk-based approach and act as an intelligent regulator, information, including data and qualitative intelligence, will underpin how the OfS undertakes its regulatory functions. It will take an information led, proportionate approach to monitoring individual providers and ensuring students can access reliable information to inform their decisions.
42. The OfS will therefore need timely and reliable provider data, and will treat it as an utmost priority. Accordingly, there will be an ongoing general registration condition for all providers to provide data on time and of the right quality. The OfS will be decisive and unapologetic in using its power to intervene (including sanctions) where a provider fails to meet this condition.



43. The OfS will also be responsible with the DDB for putting in place an effective and proportionate system of data collection and dissemination within the new regulatory landscape. It will arrange for a data strategy to be issued for consideration in Spring 2018. Further information on the OfS's approach to information, including the issues likely to be addressed in the OfS's Data Strategy is at chapter 5, Part D.

### **The OfS refining its approach as a regulator**

44. As part of its dedication to best regulatory practice, the OfS will continuously test and challenge the effectiveness and efficiency of its own approaches as a regulator. It will revisit its approach to risk assessment, the conditions it is placing on providers, and the effectiveness and efficiency of its monitoring approach.

45. The OfS will ensure that lessons learned by its staff about what works are shared across the organisation, but will go beyond this by designing its processes wherever possible to ensure these processes allow clear feedback loops. For instance, before random sampling of a provider, the OfS will clearly capture what it expects to see and why based on monitoring to date, so that it is clear whether the random sampling process has found unexpected results that may mean the OfS's monitoring approach needs to be strengthened.

### **Ethical Approaches to Regulation**

An important debate in the development of the regulatory framework proposals in this consultation has been around so called 'ethical' approaches to regulation, championed by Professor Christopher Hodges, Ruth Steinholtz, the Cabinet Office and the Department for Business, Innovation and Skills, amongst others. The following is a short summary of the main aspects of this theoretical approach. The OfS will draw on this model in developing its own, unique regulatory model.

The basic proposition is that providers should be expected to do the right thing, and must evidence that they can be trusted to do so, as partners in the pursuit of a common aim. Accompanying this trust and autonomy is a responsibility to act in collaboration with the regulator, including self-monitoring, flagging problems early, and taking ownership of problem solving. Where evidence is less convincing, the regulator's level of trust and subsequent approach should reflect this. Likewise, criminal and straightforwardly untrustworthy businesses should be treated as such.

The central aspects of this approach are as follows:

Providers must evidence that they can be trusted to behave ethically – they can do this in whatever ways are appropriate; the regulator should not be prescriptive as to formalities.

Collaborative structures should be developed, based on a co-operative partnership, with information shared freely with the regulator. For ethical providers, the regulator should avoid creating a blame culture through penalties, and support those well-meaning but rule breaking providers to improve their performance and become more ethical. Providers who cannot be trusted to behave ethically should be treated as such – with hard edged regulation, specific conditions, and firm punishment for deliberate wrongdoing.

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In developing the regulatory framework, the OfS will take this debate into account, as inspiration for developing its own, unique approach, whilst recognising both the advantages and draw backs of this approach in the context of the English higher education sector. For example, ethical culture is not the only determinant of risk. Culture and ethical practices are just one dimension of risk that the OfS will consider when regulating the market.

### **Supporting the broader government agenda**

46. The OfS, as the higher education regulator in England, will play an important role in the broader Government vision for skills. This consultation is focused on the regulatory framework, but it is essential that this regulatory framework works with other areas of Government policy and activity, both to promote choice and progression for students from all backgrounds and to support the flow of highly skilled graduates needed by employers.
47. The OfS will, in particular, work across the Department for Education (DfE), including the Education and Skills Funding Agency and the National Council for Teaching and Leadership, and with other bodies such as the Institute of Apprenticeships, the UK Research & Innovation and Health Education England. This will ensure that developments such as T-levels, Institutes of Technology and the expansion of apprenticeships yield successful progression where appropriate into higher education, that there is a joined up approach to the support of postgraduate education, there is the flow of highly skilled graduates needed in schools, colleges, the health service and the research base, and there is a cohesive approach across different regulatory regimes.
48. Alongside these priorities, a robust regulatory framework will help to safeguard the higher education sector as a whole, supporting the Government's wider Industrial Strategy.

## Public Sector Equality Duty

49. Under the Equality Act 2010, the DfE, as a public authority, is legally obliged to give due regard to equality issues when making policy decisions – the public sector equality duty, also called the general equality duty.
50. DfE as a public authority, must in the exercise of its functions, have due regard to the need to:
- a. eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
  - b. advance equality of opportunity between people who share a protected characteristic and those who do not; and
  - c. foster good relations between people who share a protected characteristic and those who do not
51. Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard to the need to:
- a. remove or minimise disadvantages suffered by persons with protected characteristics;
  - b. take steps to meet the needs of persons who share a relevant protected characteristic; and
  - c. encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
52. The general equality duty covers the following protected characteristics: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
53. From an equality impact perspective, overall our assessment is in line with that made for HERA that the benefits of the reforms will be more pronounced for those from under-represented groups and those whose outcomes currently lag behind those of their equally academically able peers.

***Question: What are your views on the potential equality impacts of the proposals that are set out in this consultation? Please provide any relevant evidence if you can as this will support future policy development.***

## PART II – Sector-level regulation

### Chapter 2 – making the market work and improving the system

#### Overview

54. The OfS will be a market regulator, devoted to the diverse set of students – past, present, and future – that it serves. It will ensure that individual providers meet high minimum standards relating to the four student objectives and corresponding risks (see chapter 1), and drive improvement in access and participation where the market will be insufficient to meet the needs and aspirations of students and society. However, the OfS will not dictate to providers what their provision should look like above these thresholds. Instead, the OfS will operate under the guiding principle that institutional autonomy, combined with properly harnessed competition, is the most effective way to ensure the English higher education sector is delivering positive outcomes for students (and, indeed, for employers, taxpayers, and wider society as a whole).

#### Box G – ‘Market regulator’

The OfS will be focused on ensuring that students have a wide choice of good quality providers offering a broad range of teaching, courses and facilities with each provider seeking to differentiate itself and innovate. When the phrase ‘market regulator’ is used, it is with this end in mind.

55. Effective competition compels providers to focus on students’ needs and aspirations, drives up outcomes that students care about, puts downward pressure on costs, leads to more efficient allocation of resources between providers, and catalyses innovation. The higher education sector in England is well suited to market mechanisms driving continuous improvement:
- a. there are a large number of providers competing on local, regional, national and international markets
  - b. providers have sufficient autonomy to innovate and differentiate themselves from one another
  - c. under the current funding scheme, success or failure has direct implications for providers in terms of student numbers and revenue
  - d. there is a lot of information available, which has the potential to enable students to compare providers and make more informed choices
  - e. the price of the service is known to students who, in many cases, pay the bulk of this price as graduates (directly, or indirectly through loans)

56. It does not, however, follow from these features that an entirely laissez-faire approach is appropriate. Higher education is a service unlike any other:

- a. there are almost never repeat “purchases” of the same type of higher educational courses by an individual student – the market is in most cases a one-shot game
- b. many of the primary benefits to the student (for instance improved learning, knowledge, and skills, greater earnings and career prospects, and personal fulfilment) are not received immediately; they are spread out over their life time. This exposes the market to distortions such as time inconsistency (where students’ preferences change over time) and temporal discounting (where students value the benefits of higher education less because they occur in the future)
- c. similarly, the cost of higher education is often not paid immediately, but rather paid for after through graduate repayments, which in most instances are subsidised by the state. This too, creates temporal distortions, and exposes the sector to moral hazard (where students may take greater risks because they do not necessarily bear the full cost of the degree)
- d. there are (currently) significant information asymmetries, and prospective students often make decisions with limited reliable information
- e. in the case of undergraduate degrees, there is a price cap in place for some providers (see chapter 3). In practice, providers sometimes compete in terms of the grades they require to admit students, rather than on price
- f. institutional failure has significant repercussions for current, past, and (in some cases) potential future students, as well as wider social and political consequences. This is why the OfS’s regulatory framework is designed to prevent sudden, unplanned market exit (in particular through its approach to early warning monitoring), and support students to continue their studies if their original provider can no longer deliver their course. The creative destruction witnessed in more traditional markets, though still a powerful and relevant tool, has the potential to carry greater costs
- g. there are both private and non-profit organisation competing in the provision of similar services

57. Alongside this, there are particular challenges with regard to access and participation, including:

- a. the scale and pace of change needed from the current performance on access and participation to meet the needs and aspirations of students and society
- b. the need for providers to collaborate with each other on the provision of dispassionate information, advice and guidance to students, such as those who are the first in their family to consider higher education, who need particular support to understand their choices, and the likelihood that students may progress to a provider other than the source of their advice
- c. the dependency of providers on parties other than themselves – schools and colleges with regard to access and employers with regard to progression – to make progress
- d. the weak incentives, given the cost of their support and their relatively worse outcomes, for providers to recruit students from disadvantaged backgrounds and with lower or non-traditional qualifications

58. Given the market based approach, how the OfS shapes this market – how it regulates the sector as a whole – is of paramount importance. Below is an overview of the OfS's approach to sector wide regulation; more detail can be found in the relevant sections that follow.

59. Whilst the OfS will be a market regulator, it will also recognise the relationship between students and providers is about much more than a rigid transaction. Higher education goes far beyond the exchange of goods and services for money; students collaborate and co-create their experiences, often forming strong, personal relationships with staff and providers themselves.<sup>11</sup> Students need to be protected as they make potentially life changing decisions about higher education, but this cannot and will not be at the expense of deep, trust-based higher education experiences.

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<sup>11</sup> <http://www.universitiesuk.ac.uk/policy-and-analysis/reports/Documents/2017/education-consumer-rights-maintaining-trust-web.pdf>

60. The OfS will draw on a range of tools to influence the higher education sector, including:

- a. ensuring that students, from all backgrounds, have access to information which is relevant to their choices, such as TEF and the Longitudinal Educational Outcomes (LEO) data, and – for those from under-represented groups – that there is broader advice and guidance made available by providers
- b. encouraging ease of student transfers, and making students aware of this ability
- c. holding individual providers to account for delivering the outcomes students have a right to expect, by setting conditions for all providers in the sector (this is covered in more detail in Part III)
- d. creating an environment in which providers comply with consumer law consistently across the sector, and working to create an environment where student contracts are clear, quantifiable and fair across the sector
- e. removing barriers to entry for new providers that meet a high bar
- f. creating space for innovation in the delivery of higher education
- g. championing issues and sharing best practice, in particular promoting value for money for students and the taxpayer
- h. funding providers through the teaching grant

61. Just as important as what the OfS will do, is what it will not. The OfS will be a marked departure from the current regulatory regime of HEFCE, OFFA and others, and this means that there will be areas in which the new regulator will not act.

62. The OfS will not prop up failing providers: there is nothing wrong, in and of itself, with a provider closing down. Indeed, it is a sign of a healthy, functioning market. In practice, any closure will likely impact the interests of students, both present and past; the OfS will seek to ensure providers protect student interests in such an event. There will be an initial and ongoing registration condition for all providers in the Approved categories to have an agreed student protection plan in place. This will ensure that students have clarity and are supported to continue their studies. See the Guidance for more on this condition.

63. Similarly, the OfS will not use registration conditions to directly drive continuous improvement above the baseline requirements except for access and participation, for which the market will be insufficient to drive the progress needed (see chapter 5). Once meeting a high minimum standard, the OfS will leave autonomous institutions to flourish on their own terms and will instead shape the market by supporting effective demand (in particular, through effective provision of information).
64. Diversity is a strength of the sector, and as long as a high minimum standard is reached and a level playing field maintained, the OfS will not mind how providers do so.

### **Understanding the sector**

65. Although choice and competition are potent forces for driving improvements, they nevertheless require careful monitoring to ensure they are working in the student interest.
66. The OfS will be clear in how it assesses the higher education market as a whole, and therefore how it assesses its own performance as a market regulator. A flourishing market will produce a sector that is:
- a. delivering a diverse range of innovative, high quality education, accessible by all students from all backgrounds, that enables them to meaningfully progress in their lives after their studies, and that allows them to achieve a qualification that meets UK standards and holds its value into the future
  - b. delivering for employers and the economy, driving productivity and building the right skills base, allowing individual students and the communities they live and work in to thrive
  - c. using resources efficiently and transparently, ensuring that funding is sufficient and delivering value for money for students and taxpayers
  - d. resilient and responsive to a shifting national and global climate; capable of delivering outcomes in both the short and long term
  - e. perceived by students, citizens and society to be effective at delivering these outcomes, partly for the sake of longevity, but also because this is a good in itself
  - f. contributing effectively to the international competitiveness of the UK's research base, delivering undergraduate and post-graduate teaching



informed by excellent research, and ensuring a continuing pipeline of postgraduate research talent for the economy

67. The OfS will monitor the sector and itself, evaluating performance against these characteristics. It will draw on data and intelligence gleaned from its monitoring of individual providers as well as monitoring data specific to the sector as a whole.
68. In considering the sector as a whole, the OfS will scan the global horizon and look beyond it. The OfS will use this horizon scanning alongside intelligence obtained from risk monitoring of individual providers (see chapter 5) to identify specific themes or issues it wishes to explore at the sector level. This will enable the OfS to anticipate the future threats, challenges and opportunities that may not immediately be apparent, but have the potential to restructure the entire higher education landscape. Artificial intelligence and other technology might revolutionise assessment, educational research might transform pedagogy, macro trends might reconfigure the skill requirements of the economy; the OfS will work to anticipate and navigate the uncertain future.
69. If, as part of its horizon scanning activity, the OfS identifies a particular risk, opportunity or threat, it will take action either at a sector or provider level, or both. For example, if there were wider economic changes that dramatically affected the sustainability of many providers, the OfS would review its regulation of individual providers, with particular regard to student protection plans. It may find that in order to retain the same level of protection for students, changes are required. The OfS would then work with providers to improve their student protection plans so that they remained strong, deliverable, and in service of the student interest.
70. The OfS may identify particular themes or issues it wishes to explore at a sector level. These themes may be more relevant to some providers than others, and so the OfS may choose to explore these themes in more detail through targeted engagement with specific providers or by means of focus groups or thematic surveys. The findings of these thematic reviews could then be reflected in revisions to the OfS's approach to monitoring or published to promote wider learning. In any case, thematic reviews have the potential to be powerful catalysts for sector wide collaboration, focusing debate and creative energy on the sector's most pressing challenges.
71. When the sector as a whole is not performing as it should, the OfS will deploy the tools outlined in this chapter to correct it.

## **Financial Conduct Authority: thematic reviews**

This case study looks at how the FCA incorporates a thematic approach within its supervisory model. It gives them an alternative lens to examine the behaviour of firms and markets and enables a more forward-looking and proactive supervisory approach, something the OfS will learn from, taking account of their markedly different contexts. For example, the OfS has strong ambitions for supporting and facilitating cross-sector collaboration. Thematic reviews are a good way to focus providers on sector-wide issues and drive collaboration. The OfS will encourage and enable the sector to own and proactively develop collaborative solutions to systemic, sector-wide challenges.

The FCA uses thematic reviews to address actual or potential harm regarding an issue or product that is affecting a number of firms in a sector or market. They form a significant part of the FCA's supervision model and provide a different perspective to the ongoing proactive supervision of firms and event-driven, reactive supervision of actual or potential harm.

Typically, the reviews are conducted by people with specialised expertise, comprising mostly extensive desk-based reviews of information and site visits. The teams also work with industry practitioners and professional bodies, where appropriate.

Thematic reviews can be applied to a large variety of situations, firms and groups of consumers. This does not include competition issues. Data collected for thematic work tends to be more granular and more immediate than some of the other data the FCA collects from firms e.g. through regulatory returns.

### **Encouraging collaboration**

The FCA also uses thematic reviews to drive collaboration and bring firms together to focus on sector-wide issues and shared problems and challenges. For example, in the context of talking about the findings of thematic reviews, the FCA sometimes organises industry events. These can result in industry-led spin off meetings, conferences and working groups.

The OfS will seek to replicate and expand on the collaborative elements of thematic reviews. In particular, the OfS will hope to generate sector led responses to sector wide challenges, using thematic reviews as a way to focus collective attention on particular areas.

## **Student engagement**

72. The OfS will engage with students to ensure the student voice is not only heard clearly, but that students actively shape the OfS and – by extension – the sector itself. Alongside the student representation on the Board and Student Panel, the OfS will seek the input of individual students and their representative bodies, including student unions.
73. This will include a student panel operating with a clear link to the formal governance structure of the OfS, and supporting the ability of the student representative on the main board to ensure students' views are taken full account of in the OfS's decision-making processes. Similar practice exists among other regulators, including Ofgem, the Civil Aviation Authority and the Office of the Rail Regulator, who make use of consumer advisory panels to advise and challenge on policy.
74. Students will also have presence within the expert panel assessing institutions' ratings under TEF and institutions are encouraged to show how they have involved students in preparing their submission to the TEF panel.
75. Additionally, there may be potential for the Designated Quality Body to have student representation in its formal governance structure given such representation has operated successfully at the Quality Assurance Agency

## *Student unions*

76. On student unions, the Education Act 1994 (Part 2, S22) requires governing bodies of institutions to take steps to ensure various requirements are observed by student unions at their establishment (for example on financial affairs, governance and election practice). The governing body of every establishment is required to publish a Code of Practice on how legislative requirements will be met, and the Code of Practice must be brought to students' attention once a year.
77. Under the prevent duty providers must have regard to the need to prevent its students from being drawn into terrorism. In doing so their policies should set out clearly the expectations as to acceptable activity on its premises, including that undertaken by their students' unions and societies. That should include making clear the need for student bodies to challenge unlawful extremist ideas.
78. The main regulator of student unions is the Charity Commission. However, student unions can play an important part in the academic and wider experience of students, and form a significant element of the overall student experience. The OfS should take a keen interest in this role, including whether providers are complying with the 1994 Act, challenging those institutions which do not ensure

that their student unions are accountable, transparent or providing value for money.

79. Providers also have a duty to protect freedom of speech, and this duty extends to all meetings and activities on their premises, including those run by the student union.

### **Case study: Listening to people – Care Quality Commission**

This case study looks at how the CQC ensures that the voices and experiences of people who use services, their families and carers, and staff are at the heart of its approach to regulation. The OfS will regulate on behalf of students and, similarly to the CQC, has an ambition to build engagement into every stage of its regulatory model and its processes for setting priorities. Although the OfS will take a very different regulatory approach (it will not be inspection-led, for example), it can still learn from the CQC - their principles of co-production, their practical tools for communication and engagement, and their commitment to listening to under-represented and less well heard groups.

Listening to the views of people using services, and care staff providing those services, is an integral part of the CQC's approach to monitoring the quality of care. The CQC aims to make sure that people from across the population are enabled and encouraged to tell them about their views and experiences of care. This includes people in vulnerable circumstances and those less likely to be heard. They do this in a number of ways including:

- Talking to people receiving care on inspections and observing how care is delivered.
- Conducting a national patient survey programme.
- Involving the public in inspections through their 'Experts by Experience' programme – people with experience of services who are trained to take part in inspections.
- Working with a wide range of partners – including the Healthwatch network, commissioners, providers of care, council overview and scrutiny committees, GP patient participation groups, and the voluntary and community sector – to learn more about people's views of care. The CQC invests in partnerships with organisations that work with and represent people using services and carers through the 'Tell us about your care' programme, in order to increase their access to people's experiences of care on an ongoing basis.
- Researching the needs of their website users to design tailored content and social media campaigns, and contacting groups of people whose voices are often not heard (such as those with a learning disability, or people in the criminal justice system), through an ongoing programme of work to raise public awareness and understanding of CQC.
- Offering a range of mechanisms for people to share their experiences of care. For example, people can share both positive experiences and concerns by email, by phone or through a web form.

These methods generate significant engagement: 21,681 people shared their experience via web form in 2016/17 alone. This engagement directly informs the operation of the CQC – in response, 485 scheduled inspections were brought forward and 112 urgent responsive inspections were carried out.

Whilst there are fundamental differences between the OfS and the CQC, the OfS can still learn from their approach to end user engagement. The OfS will build on the commitment modelled by CQC to engage with users, especially underrepresented groups, and will learn from their specific methods of communication where relevant..

## Sector-level regulatory tools

80. The following sections outline the tools that we propose the OfS should use to manage the risks to and promote the interests of students and taxpayers at the sector level.

### Student choice and information

81. The ability of students to make informed choices is critical, both for the individual and to shape the sector for the benefit of future students. Although there are vast amounts of information available to students, this information is sometimes hard to navigate and is not always consistently presented. This is particularly the case for students who have less awareness of higher education provision, such as those who are the first in their family to consider it. In order to support students to make the choices that are right for them, the OfS and Government need to ensure that the right information is presented in the right way. The OfS will draw from the latest expertise in behavioural science and technological development, as well as student input, to ensure that information is presented to students effectively.

82. An important component of the OfS's approach to student information will be to ensure coherence and comparability in the information provided to students from a variety of sources. Schools, further education providers and employers, amongst many others, all play a role in informing students. The OfS will work, in partnership with others, to empower students through these different sources, rather than overwhelm them.

83. In particular, the OfS will improve the quality of information available to students through two new information sources: the TEF and the Transparency condition (further detail in the Guidance). Alongside these, the OfS will revisit the operation and design of Unistats, taking the latest thinking on behavioural science into account, to consider how best to present this data in a consistent and helpful way for students, and ensure they have access to an authoritative source of information about higher education. Providers will also be expected to provide information, advice and guidance to students from disadvantaged backgrounds and under-represented groups through activity negotiated within their access and participation plans.

### The Teaching Excellence and Student Outcomes Framework (TEF)

84. Until recently, there had been no clear, single assessment of measures that are related to teaching and learning outcomes. In introducing the TEF, the UK is leading the way in recognising and rewarding teaching excellence and student outcomes. The TEF provides an additional indicator of teaching excellence and

outcomes that complements the high standards of academic quality already required of all UK providers.

85. For students, the TEF provides clear information about the quality of teaching at different providers, and the outcomes they might expect. Providing this information will help students make better-informed decisions, about what and where to study.
86. By strengthening student choice, the TEF will also drive up the quality of teaching across the sector. The expected feedback loop resulting from student demand will create a clear incentive for providers to improve and innovate in order to attain the highest rating. A review carried out by Universities UK has confirmed that, already, 81% of providers that responded to the survey had made additional investment in teaching and learning, including investing more in teaching staff and facilities and reforming their promotion criteria to give more emphasis on teaching since the Government committed to establishing the TEF.<sup>12</sup>
87. The first full assessment under the TEF has now been carried out with almost 300 providers participating. The “lessons learned” review has shown that the TEF has generally worked as intended and that the assessment process was robust and fair. As set out in our TEF Lessons Learned document<sup>13</sup>, the Government has, following the review, made a number of small changes to the assessment framework for future years of the TEF.
88. The Government is also proceeding with the development of TEF at subject level, beginning with two years of piloting to test different models. Subject level assessment is critical to ensure the TEF provides maximum benefit to students: teaching quality can vary significantly across a provider and students will be most interested in information about the quality of the specific subject they intend to study. Because of its importance to students, the OfS will prioritise taking the TEF to subject level as soon as is practically possible. The current pilots are to understand how best to move to subject level, not whether to do so.
89. One of the data sources for TEF is LEO. This is the most robust dataset yet to capture graduate employment outcomes. Instead of survey responses LEO uses information from HM Revenue and Customs and the Department for Work and Pensions on employment and benefits. As well as its contribution to the TEF metrics, LEO data is publicly available to help students making choices about

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<sup>12</sup> <http://www.universitiesuk.ac.uk/policy-and-analysis/reports/Documents/2017/review-of-the-teaching-excellence-framework-year-2.pdf>

<sup>13</sup> <https://www.gov.uk/government/publications/teaching-excellence-framework-lessons-learned>

higher education who want to understand how a particular route through higher education will support their success in the workforce. This is an important, ground-breaking dataset for students, and will continue to be a priority for the Government and the OfS.

### **TEF and the transition to the OfS**

90. Between January and March 2018, HEFCE will take forward the implementation of TEF on behalf of the OfS; from April 2018 onwards the OfS will be solely responsible for the implementation of the TEF. This will not cause any disruption for providers participating in the process, or for students wishing to rely on the outputs.
91. In accordance with the provisions set out in HERA, a statutory Independent Review of the TEF will likely take place in academic year 2018/19 and will report in time to influence the assessment framework for assessments taking place in academic year 2019/20 (TEF Year 5). Depending on the findings of the Independent Review and of the subject pilots, this will also be the first year of subject level TEF. The assessments taking place in academic year 2019/20 will therefore constitute the completion of the TEF development process. This will be a significant milestone for the TEF, which has the potential to evolve over time as the Research Excellence Framework (REF) has done.
92. Although participation in the TEF is currently voluntary for providers, to deliver the maximum benefits and transparency for students, the OfS will make it compulsory from 19/20. For some smaller providers, however, the cost of participating in TEF may be disproportionate. From the launch of the OfS regulatory framework in August 2019, participation in TEF will be an ongoing registration condition for all Approved and Approved (fee Cap) providers with more than 500 undergraduate higher education students. Smaller providers who meet the eligibility requirements will continue to be able to participate on a voluntary basis, as they can currently.
93. Providers from the Devolved Administrations who meet the eligibility requirements will continue to be able to choose to participate in TEF if their Government has given the appropriate consent for them to do so and they meet the baseline quality condition.

***Question: Do you agree or disagree that participation in the TEF should be a general condition for providers in the Approved categories with 500 or more students?***



## Information to support access and participation

94. Given the centrality of access and participation to its activities, the OfS will ensure that students have access to new information that covers the diversity of the student population across different providers. When students are making choices about providers, the transparency condition will enable them to see detailed information about student acceptances, graduation and more broken down by gender, socio-economic status and ethnicity. Furthermore, the information provided should support current and future students with diverse needs and aspirations, and so the OfS will ensure that information provision meets the needs of all potential students. This includes those from under-represented groups who may have less experience and awareness of higher education, and in general those who currently experience an information asymmetry.
95. The information landscape is continually changing. The OfS will work collaboratively with students to ensure that the information that is provided, and how it is provided, is continually adapted in response to changes in the landscape and continues to support students to make the right higher education choices for them.

### **Case study: use of Behavioural Insights approaches by the FCA**

This case study looks at how the FCA has embraced behavioural insights approaches as a tool in its analytical toolbox. The OfS's context is different, and is certainly not a classic consumer market. However, the OfS has a strong aspiration to integrate behavioural insights to achieve a similar impact to the FCA, and there are many potential opportunities to do so. For example, through the provision of information to empower and shape student choice, and through guidance produced for providers. Both the widening participation and continuous improvement agendas could also be usefully shaped by behavioural insights approaches.

The FCA uses insights from behavioural economics, together with more traditional analysis of competition and market failures, to deliver more effective regulation and improve outcomes for consumers. The FCA also draws on big data analysis and technology to carry out sophisticated econometrics, field trials and competition analysis.

The FCA has identified four broad approaches it can use to solve behavioural and other financial market problems, ranked from least to most interventionist:

- **Provide information** – require firms to provide information in a specific way or prohibit specific marketing materials or practices.

- **Change the choice environment** – Adjust how choices are presented to consumers.
- **Control product distribution** – Require products to be promoted or sold only through particular channels or only to certain types of clients.
- **Control products** – Ban specific product features or whole products that appear designed to exploit, or require products to contain specific features.

These approaches are used by the FCA to promote competition in a number of ways, including helping consumers get the information they need, working with firms to improve how they communicate with consumers, and helping consumers to act on their decisions. For example, when looking at retail insurance services, the FCA found that [disclosing the premium](#) consumers had paid the previous year was the most effective way of prompting consumers to shop around, cancel or negotiate their insurance policy. Doing so caused the equivalent of 11-18% more consumers to switch or negotiate their home insurance policy.

Behavioural insights has clearly had a powerful effect at FCA, and the OfS will aspire to emulate the successful application of behavioural science, and experimentation generally, to its own (very different) sector.

## Student transfer

96. Many higher education students choose the course and institution that best fits their needs and career aspirations, and offers them the best learning experience and employment outcomes. However, students sometimes want, or find it necessary, to transfer from one course or institution to another.

97. The reasons for transferring are varied. A student may realise that their current course, institution or wider student experience does not meet their expectations. A poll of 1,423 UCAS university applicants carried out by the Student Room in 2016 found that 40% were having 'second thoughts' or were 'not happy' about their university choice. Alongside this, the 2012/13 Longitudinal Destination of Leavers from Higher Education survey reported that 21.7% of UK domiciled leavers were likely or very likely to choose a different provider were they to have such an option again. In addition, 34.6% were likely or very likely to choose a different subject.

98. In other cases, the student's personal circumstances may change. For example, a student might become a parent or a carer during their course, resulting in the need to take time out from their studies or move to a different part of the country to adapt to their new responsibilities. If studying part-time, they may need to take a break from their studies as a result of additional work commitments.

99. Whilst many providers do have formal transfer systems in place, the take-up of students transferring remains limited.<sup>14</sup> Many students are unaware of the transfer opportunities available to them.<sup>15</sup> Wider take-up of these options would strengthen competition within the sector, provide more opportunities for students, and support flexible and career learning.

100. Students should have, and be aware of, the option to transfer. For individual students, like the new parent changing to a part-time course so they can spend more time with family, or the carer who needs to move to another part of the country, but doesn't want to give up their studies, transfer has the potential to improve their lives dramatically. For students collectively, the availability of student transfer empowers choice and helps drive competition. The OfS will work to ensure students are able to transfer fluidly within and between providers wherever it best meets their needs and aspirations.

101. In order to improve the information available to students, the OfS will set condition (condition H) requiring providers to publish information about their arrangements for students to transfer. If the provider has no such arrangements in place, it must set out how students can transfer.

102. The OfS will also monitor and report on the availability and utilisation of student transfer arrangements, in accordance with HERA (section 38).

103. The OfS will monitor whether providers have procedures in place to facilitate student transfer, along with information about students transferring into courses delivered by their institution (including their background, protected characteristics, reasons for transferring, and their previous course and provider. Guidance will be given to providers on how best to report this information to the OfS.

104. The OfS will use this reporting to raise the profile of student transfer for students, and highlighting successes, best practice, and areas where further work is needed for providers. If necessary, the OfS will go further to promote student transfer and raise awareness among students to help individuals make the

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<sup>14</sup> The Government's [Call for Evidence on Accelerated Courses and Switching University or Degree](#), which ran over Summer 2016, found that 91% of providers that responded had a formal system in place for students transferring between the courses they offered.

<sup>15</sup> Nearly 20% of the 4,500 student respondents were unaware of the option to switch to another provider, 13.3% did not know that the option to change from one degree programme to another was a possibility, and 60% of student respondents (including both students who had transferred and those who had not) said more information would help their decision. This is set out in the [Findings from the Call for Evidence on Accelerated Courses and Switching University or Degree](#).

choices that are right for them, or even commission research into the means by which transfer could be most effectively encouraged.

***Question: Do you agree or disagree with the proposed general ongoing registration condition requiring the publication of information on student transfer arrangements? How might the OfS best facilitate, encourage or promote the provision of student transfer arrangements?***

## **Removing unnecessary barriers to entry (for new providers that meet a high bar)**

105. Newer, smaller, and specialist providers are often well equipped to drive innovation, offering courses and delivery models (such as two year degrees) that suit the needs and aspirations of a more diverse student body, including mature students and those from more disadvantaged backgrounds. However, the current regulatory framework, designed at a time where large, multi-faculty universities were the norm, is not conducive to encouraging new entrants and can create unnecessary barriers for such providers.
106. The OfS's proposed regulatory framework will change this. It has been designed with the needs of all providers in mind – including new providers looking to enter the higher education sector for the first time. The OfS will regulate providers based on any risks they pose, and benefits or funding they access – not based on age or corporate form (though, of course, this context will be considered where relevant to risk).
107. The approach will enable a level playing field, where new entrants are encouraged rather than faced with additional barriers. At the same time, the risk-based approach to regulation enables the OfS to continue to set a high bar to entry to ensure students receive high quality education and the reputation of the sector remains protected.
108. In addition to removing the current unnecessary barriers facing providers wishing to enter the market, the OfS will also put in place arrangements for a new provider to seek powers to award its own degrees as soon as it is registered. Granting such awarding powers on a probationary basis (New Degree Awarding Powers) means that OfS can ensure that risk to students is properly mitigated whilst providing opportunities for fair competition to new high quality providers.
109. The OfS and HERA will enable new providers in particular through the mechanisms below:

**a. Simplification of the regulatory landscape:**

The OfS will be the single market regulator, doing away with a system where providers in receipt of grant funding are regulated by HEFCE and those with specific course designation are regulated by DfE, under different regimes.

**b. No requirement for a track record**

All of the initial registration conditions set out in the Guidance are designed in such a way that providers do not need to have a track record of delivering higher education to be able to meet the conditions. Where such a track record exists, the OfS will take it into account, but there are other means of evidencing how a registration condition is met. For example, the financial viability and sustainability condition (see the Guidance) can be met by demonstrating availability of sufficient funds and sound business plans, or even a legally binding, financial guarantee from a third party, rather than evidence of past financial performance.

**c. Increased options for market entry**

There will be more ways to begin degree level provision (though always under the same regulatory system, accessed by a single gateway to the sector). High quality new providers will be able to gain access to new Degree Awarding Powers directly, without the need for a track record, by applying for new Degree Awarding Powers (see [Simplifying access to the market: Degree Awarding Powers and University Title](#) for more detail).

**d. Recognition of diversity**

The current regulatory system for publicly funded providers is, to a large extent, geared towards larger, traditional universities, making it difficult for new providers to meet stringent requirements. The registration conditions in this regulatory framework are explicitly tailored to a more diverse set of providers, by focusing on outcomes rather than processes. For example, the management and governance condition (see the Guidance) requires providers' governance arrangements to be appropriate for their particular size, complexity and corporate form. This means that unlike now, newer and smaller providers will not have to try and comply with the Committee

of University Chairs code of governance<sup>16</sup>, designed for large universities, to gain access to public funding. Instead, they are required to demonstrate compliance with the main principles in a way that is appropriate for them.

#### **e. Reduction in burden**

The OfS's approach to risk-based regulation means that providers that do not pose specific risks, regardless of the age or corporate form, will only be subject to light touch monitoring. This means that there is no need for annual re-designation for student support, or annual reviews involving lengthy returns. In addition, it is proposed that the OfS and the DDB will seek to minimise the data collection burden, by ensuring that the OfS is able to draw on data available from the DDB for its regulatory purposes. This means additional requests from the OfS should be relatively rare for providers that do not pose any specific risks. In the short term, data requirements may be greater for some providers, but this will be in service of a long term reduction in regulatory burden.

#### **f. Grant funding and registration fees**

Subject to the OfS registration fee consultation outcome, the Government may partially subsidise new providers' registration fees for a limited period of time. Providers who register as Approved (fee cap) will be eligible to access the OfS grant funding.

#### **g. Validation**

The OfS will be able to take concrete steps to improve validation services, and address some of the barriers providers can face when seeking a validating partner and which can make offering innovative and flexible provision unnecessarily burdensome. Where these barriers remain, the OfS can enter into commissioning arrangements with existing higher education providers, or become a validator itself, if authorised to do so in regulations made by the Secretary of State. See chapter 8 for more detail.

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<sup>16</sup> Committee of University Chairs' Code of Governance.  
<http://www.universitychairs.ac.uk/publications/>

## Creating space for innovation

### Accelerated courses

110. The Government wants to see a significant increase in the number of students studying for a degree on an accelerated course. Accelerated courses are a means of giving students the opportunity to study for a qualification over a shorter period of time, by increasing the intensity of study during the academic year. They compress equivalent content into at least one year less than a standard degree course, but lead to the same or equivalent higher education qualification. Evidence suggests that accelerated degrees particularly appeal to certain types of students who may not have been attracted by the prospect of three years of higher education.<sup>17</sup> They include mature students – for example, those wanting to re-train, and students who are keen to enter or re-enter the workplace more quickly than a traditional degree allows them to.
111. HEFCE's flexible learning Pathfinder project in 2008-09 enabled a new tranche of accelerated degrees. Responses to our 2016 call for evidence on accelerated degree courses indicated continued high interest from higher education providers: 73% reported seeing a demand for such degrees from students or employers. Providers also indicated current in-year tuition fee caps are a significant barrier to growth, as those wishing to offer accelerated courses can only charge two 'standard' years of fees for three years' worth of tuition.
112. HERA includes powers for the Government (subject to approval by Parliament) to set the annual tuition fee cap – for accelerated courses only – at a higher level than their standard equivalent. This should incentivise more providers to offer accelerated courses, increasing choice for students. At the same time, the cost for a student taking an accelerated course which is subject to the new fee caps will be less than that of the same course over a longer time period.
113. The Government will consult shortly on specific proposals for accelerated courses. That consultation will set out the intended launch date of the new arrangements for Government and the OfS to implement accelerated courses, and will describe proposed student finance arrangements for this form of provision and seek views on other measures to promote their adoption by providers and take-up by students. The regulatory framework will support this

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/595637/Accelerated\\_Degrees\\_Literature\\_Review.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/595637/Accelerated_Degrees_Literature_Review.pdf)

new form of provision. For example, the OfS will make relevant information available to students and will use its powers to undertake thematic reviews to support their early and widespread adoption. The consultation on accelerated courses will provide further detail.

### **Championing issues and sharing best practice**

114. Alongside the formal guidance the OfS must provide in relation to registration conditions, it will be well placed to champion certain issues, themes, and approaches. Although the OfS will not, in general, dictate how autonomous providers should act or what methods they should use, the OfS will be able to use its position to shape sector wide debate and focus. Through this soft influencing power, the OfS may then focus innovation in particular areas, or encourage the dissemination of best practice and what works more readily.

115. A cornerstone of the OfS's agenda-setting influence will be its annual report. In this document, the OfS will look at progress made, the challenges that remain, and the future of the sector. With time, this report could become a major event in the higher education calendar – a State of the Union Address to students, taxpayers and providers alike.

### **Teaching grant**

116. The teaching grant is designed to support a range of activities and provision across those providers who are registered in the Approved (fee cap) category of the register. The majority of the funding is used to support provision where the cost is greater than the amount received as tuition fee income either because the course is costly to provide, because the location brings about additional costs or additional opportunities, or the provision is highly specialised, as with the support provided to our world-leading specialist institutions. The teaching grant supports efforts to improve social mobility by widening access to under-represented or disadvantaged students and ensuring their continued participation and success in higher education. Funding also supports innovation and the national academic broadband infrastructure.

117. The OfS will continue with this approach, but it will also wish to deploy the teaching grant strategically, taking into account Government priorities. This will enable it to influence sector level outcomes.

### **Registration conditions**

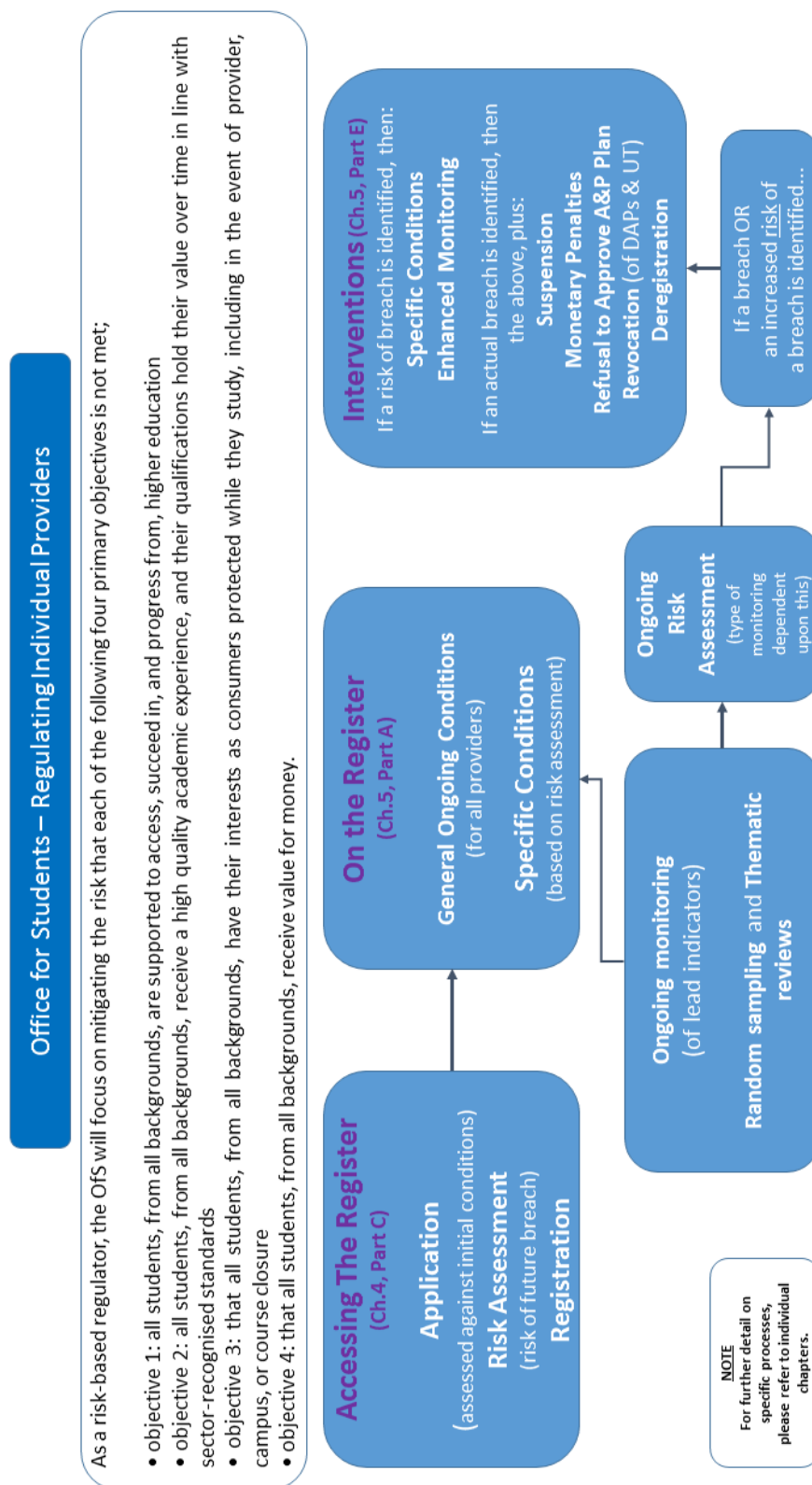
118. While the processes of registering providers, setting conditions and monitoring them constitute provider-level regulation, and are covered in detail in the next chapter, they nevertheless have a role in shaping the sector as a whole, and the OfS will consider its approach in light of its overall sector-level goals.



***Question: Do you agree or disagree with the proposed approach to sector level regulation in chapter 2?***

## PART III – Provider-level regulation

119. The following diagram provides an overview of the OfS's approach to regulating individual providers



## Chapter 3 – The register

120. Whilst the OfS will be a market regulator, leaving an autonomous sector to flourish and educate and support students in its own way, it will also regulate at the provider level to ensure risks to the four student objectives being met are managed (set out in chapter 1). Central to this provider level regulation is the register. The register will be a single gateway for providers which are successful in their applications to access the sector; by controlling which providers are allowed on the register, under what conditions, the OfS will be able to efficiently and effectively mitigate the risks to the four student objectives.

### What is the register?

121. Under HERA, the OfS must establish a register and may determine the different parts of that register, i.e. the registration categories. It is a list of all higher education providers officially recognised by the OfS (with the exception of School Centred Initial Teacher Training providers – see chapter 6 for further detail), and is a central component of the OfS’s approach to regulating individual providers.

122. As set out in the 2016 [White Paper](#) higher education providers, as subsequently defined in HERA, wishing to:

- access public funding, including student support, from 19/20
- apply to the Home Office for a Tier 4 licence, or to maintain an existing licence from 19/20
- apply for Degree Awarding Powers (DAPs) and/or University Title (UT) from 19/20

will be required to register with the OfS. There will also be optional registration for those providers who want to be officially recognised as higher education providers but do not want to access Government funding or student support, or to obtain a Tier 4 licence.

123. All providers will be able to choose the category of registration they want to apply for, based on the requirements and benefits of each category and will have the option to apply to change category.

124. This register will replace the current fragmented system with a single route to entry. It will provide a simpler, clearer way to become a recognised higher education provider, creating a consistent regulatory approach across the sector. This new system will give students confidence in those providers on the register, whilst also levelling the playing field for providers, thus enabling and incentivising effective

competition and collaboration between providers to drive innovation, choice and quality within higher education.

## Categories of the register

125. The register will be divided into different categories, each with different registration conditions and benefits. They are designed to ensure the OfS delivers a high bar for entry, so that students are protected, whilst minimising unnecessary burdens for providers around registration.

126. The conditions for each category fit the benefits: they are proportionate to the level of assurance required for the funding and other benefits gained. They will be applied in proportion to risk and will focus on the outcomes that need to be assured in the interests of students, employers, taxpayers and the wider reputation of the sector. They are designed to ensure that high-quality new providers are not disadvantaged when registering in any category.

127. As proposed in the [2016 White Paper](#) the OfS register will have three categories:

- **Registered basic:** for providers who want to be officially recognised as offering Higher Education courses;
- **Approved:** for those accessing student finance without eligibility for grant and no fee cap obligations; and
- **Approved (fee cap):** with eligibility for grant in return for a fee cap and, where charging tuition fees up to the higher amount, an access and participation plan.

128. Throughout the document we have grouped and referred to these categories as follows:

Registered	Registered basic	
	Approved Approved (fee cap)	} Approved categories

129. These categories will enable all providers to choose how they participate in the higher education sector, and what types of Government support they will be eligible to access. The proposed categories essentially give providers a choice over:

- a. *whether they want to be eligible to access public funding (grant or student support funding):* If not they can remain at “Registered basic”. Otherwise for their courses to be eligible for student loans, they would need to register as “**Approved**”, or if they also wanted to be eligible for the higher amount of student loan, OfS grant or funding from Research England, “**Approved fee cap**”
- b. *whether they want to be eligible to apply for or maintain a Tier 4 licence and/or DAPs and University Title:* If they do, they would need to register as “**Approved**” or “**Approved fee cap**” providers regardless of access to public funding
- c. *whether they want to operate within a fee cap and thus have the potential to be eligible for the full range of publicly funded grants available, including recurrent teaching grant, capital or competitive funds and access to all types of research funding from the Science & Research budget – including Quality Related research funding from Research England and /or charge fees up to the maximum fee cap (which will be met in full via tuition fee loans), subject to the provider agreeing an access and participation plan:* If they do, they would need to register as “**Approved fee cap**”

130. Table 3 sets out examples of which providers might choose to access each of these categories according to the benefits and requirements of each

**Table 3: Overview of Registration Categories**

Category	Approved (fee cap)	Approved	Registered basic
<b>Who would register?</b>	Providers wishing to: <ul style="list-style-type: none"> <li>○ access public funding for their courses and/or students;</li> <li>○ be able to make an application to the Home Office for a Tier 4 licence or maintain their existing Tier 4 licence; or</li> <li>○ have Degree Awarding Powers (DAPs) or University Title(UT), will first need to be Approved.</li> </ul> Providers will be able to choose between the two ‘Approved’ categories, based on what best fits their operation.		Providers who want to be officially recognised as providers of HE but do not want to access Government funding or student support, DAPs/UT, or to obtain or maintain a Tier 4 licence.
<b>Benefits</b>	Automatic eligibility for student loans (basic amount without A&P plan, higher amount with A&P plan) for all eligible HE courses  Eligibility for OfS grant funding  Eligibility for funding from Research England and Research Councils	Automatic eligibility for student loans (lower fee amount) for all eligible HE courses  Eligibility to apply for and maintain a Tier 4 licence	Officially recognised on the register as HE providers

	Eligibility to apply for and maintain a Tier 4 licence Eligibility to apply for DAPs/UT	Eligibility to apply for DAPs/UT No fee cap	
<b>Eligibility</b>	To register in any category, a provider must be an English higher education provider as defined in section 83 of HERA, delivering HE courses defined in the HERA as being courses that “meet the description mentioned in Schedule 6 to the Education Reform Act 1988”. <sup>18</sup>		
<b>Requirements</b>	All providers must supply information and data as required for the register and their category of registration, with a nominated accountable officer responsible for ensuring this is timely and accurate, and must comply with a duty to ensure they notify the OfS of any change to their registration information to ensure it remains accurate. They will be required to demonstrate that they deliver courses that match the academic standards as described in the Framework for Higher Education Qualifications (FHEQ) at Level 4 or above. On joining the register, providers will also be required to comply with an ongoing registration condition to subscribe to the student complaints scheme of the Office of the Independent Adjudicator (OIA).		
	Approved and Approved (fee cap) providers must comply with Registration conditions, common baseline initial and ongoing conditions which focus on what matters most to students and on providing value to students as well as the taxpayer. These include quality and standards, data and transparency, financial sustainability and governance, participation in the TEF, student protection plans, and facilitating electoral registration.		Registration conditions for Registered basic providers will be restricted to providing accurate and timely information, demonstrating OIA membership and verifying that courses are at HE level, (and not the registration conditions which apply to the other categories on e.g. quality or finance.)
	Approved (fee cap) providers will be subject to a fee cap of either a higher amount with an access and participation plan or the basic amount with an access and participation statement (see the Guidance).	Approved providers have no fee cap and will be required to have an access and participation statement (see the Guidance).	
	For only those in receipt of OfS [or UKRI] financial support: specific conditions of grant funding and Public Interest Principles registration conditions in relation to management and governance.		

## Franchisees

131. Where the entirety of a provider’s higher education level provision is being delivered on a franchising basis, i.e. where a provider (the ‘delivery provider’) only delivers higher education level provision to students on behalf of another higher education provider (the ‘lead provider’), the delivery provider will not normally be required to register. If it chooses to register, the Registered basic category will normally be the most suitable category because the lead provider is responsible for compliance with all required registration conditions for the Approved and Approved (fee cap) categories.

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<sup>18</sup> <http://www.legislation.gov.uk/ukpga/1988/40/schedule/6>

132. To note that for the purpose of registration, validation is distinct from franchising. Further information on validation can be found in chapter 8. In a franchising arrangement, the students studying with delivery providers still remain students of the lead provider and that lead provider remains primarily responsible for their higher education provision, including the quality of the provision and the costs. A course is considered to be part of a franchise arrangement if typically:

- a. there is a written, legally binding agreement in place between the lead provider and the delivery provider which sets out the conditions of the arrangement
- b. the fee loan is paid to the lead provider
- c. the student is registered as a student of the lead provider and is included within their data returns
- d. the student has a contractual relationship with the lead provider

#### **Providers directly offering provision (including validated provision)**

133. Where a provider offers higher education level provision directly to students (i.e. receives the fee loan payments directly for its students rather than through another provider), it must register in the Approved or Approved (fee cap) categories in order for its students to be eligible for loan funding or a Tier 4 licence. This requirement to register for loan eligibility is unaffected by whether or not:

- a. a provider's courses are validated by another institution (as opposed to the provider having its own awarding powers)
- b. a provider provides validation to other providers
- c. a provider also delivers franchised courses on behalf of another provider in addition to delivering courses to its own students, and whether, in that arrangement, that lead provider is receiving the fee loan payment directly
- d. a provider is delivering some of its courses through a franchise with another delivery provider

#### **Providers in franchising arrangements or embedded colleges**

134. Lead providers delivering all or part of a course via another delivery provider retain responsibility for their students on those courses and the quality of the provision they receive. In complying with the registration conditions relating to quality assurance, they must demonstrate that they have reliable accountability systems in

place to assure the quality of provision across all delivery providers partners and ensure reliable data collection (to ensure compliance with registration condition J1).

135. The lead provider will be required by the OfS to ensure that their delivery providers comply with the terms and conditions of their arrangement to uphold quality and standards and provide information required by the lead provider to support its accountability to the OfS.
136. In cases where, for example, an embedded college delivers higher education courses in partnership with a higher education provider, the college and the provider will need to consider the nature of the arrangement between them and consider which of the above models applies. Embedded colleges will, in addition, need to consider whether they will qualify as “English higher education providers” under the definition in section 83 of HERA and be required to register for the purposes of being eligible to apply for and maintain a Tier 4 licence from the Home Office.

### **Providers with Degree Awarding Powers**

137. Existing providers with Degree Awarding Powers and/or University Title will normally be expected to register in either the Approved or Approved (fee cap) categories. Only providers in those categories will be eligible to apply for Degree Awarding Powers or University Title.<sup>19</sup> The OfS may permit existing providers with Degree Awarding Powers or University Title to register in the Registered basic category on an exceptional basis. It may set specific ongoing registration conditions, for example to ensure degree awarding bodies are meeting the quality and standards requirements expected of a such a body.

### ***Question: If you are a provider, which category would you apply for (under these proposals) and why?***

*To note, this question is not a consultation requirement under section 75(8) of HERA but responses may be used to inform resourcing planning within the OfS. Responses to this question will be treated as commercially sensitive.*

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<sup>19</sup> Please refer to [Simplifying access to the market: Degree Awarding Powers & University Title](#) for more detail.



## Chapter 4 – Accessing the register (registration requirements)

138. In order to join the register, a provider must meet a series of conditions. Section 3 of HERA, sets out that the OfS must register a provider where it:
- a. has applied to be registered in one of the categories of the register
  - b. is or intends to become an English higher education provider
  - c. satisfies and complies with the ‘initial conditions of registration’ applicable to the relevant category of the register (see the Guidance for discussion of these conditions)
  - d. the application has been made correctly and contains all the required information
139. The OfS may specify different conditions for different descriptions of provider (as set out above), for different categories of registration and potentially also, for example, for providers above/below a certain size, or providers where primary ownership is overseas.
140. The following sections focus on:
- a. **Part A:** the proposed approach to the initial registration conditions– those which a provider must meet in order to be registered. This includes an explanation of the factors considered in developing initial conditions of registration
  - b. **Part B:** A list of the proposed initial conditions of registration and to which of the categories of the register they apply
  - c. **Part C:** An outline of the proposed registration process for providers and how providers can demonstrate they meet the initial conditions of registration
  - d. **Part D:** Specific information for those providers wishing to register in the **Registered basic category** of the register
  - e. **Part E:** An overview of the proposed benefits providers will be eligible to apply for if they are in the **Approved categories of the register** and the proposal for how providers can access these benefits

- f. **Part F:** Information on registration fees, the detail of which is set out in the consultation [OfS registration fees](#)

## **Part A: Approach to developing initial registration conditions**

141. In developing the initial conditions, the general duties in section 2 of HERA have been taken into account to ensure the conditions:

- a. do not create a conflict with the OfS's duty to have regard to the need to protect institutional autonomy
- b. promote quality, choice and opportunities for students
- c. do not prevent competition or collaboration between providers
- d. support the promotion of value for money
- e. actively promote equality of opportunity in connection with access to, and participation in, higher education
- f. enable the OfS to use its resources in an efficient, effective and economic way
- g. reflect best regulatory practice

142. All of these elements support the OfS's focus on the student interest (past, present and future) and the OfS's initial conditions have students' interest at their core. Initial conditions linked to and focused on mitigating those areas of most risk to students in order to ensure the needs and aspirations of a highly diverse pool of students are met by the higher education system. The OfS is not seeking to (nor able to) manage all risks out of the system.

143. Chapter 1 sets out the four student objectives and the corresponding risks that the OfS will seek to mitigate. These risks will be used to determine the initial registration conditions for providers in the Approved categories to ensure that such risks to students are mitigated. Please refer to chapter 4, part D for detail on registration conditions for Registered basic providers.

144. The initial conditions will be expressed as 'baseline requirements', i.e. the minimum level a provider must achieve to be registered. In doing so, the OfS will establish a high bar for English higher education; provision that does not meet these baseline requirements will not be permitted.

145. These baseline requirements will be defined in terms of outcomes (i.e. what the OfS expects providers to achieve rather than how) ensuring the OfS does not enforce a single model of delivery. However, the OfS will not look for evidence of continuous improvement when assessing whether a provider is meeting these baseline requirements, nor will it directly support individual providers to continuously improve. The only exception is in the case of access and participation plans and statements, which will be used to drive continuous improvement (see the Guidance).
146. This proposed approach will mean that:
- a. students have clear expectations in respect of the minimum outcomes a provider should be expected to deliver
  - b. students are protected because the OfS will use its resources effectively to focus on those areas of most importance to the student interest and focus on ensuring a baseline rather than, with the exception of access and participation, driving continuous improvement. Strong regulatory levers can be used to ensure that a provider's performance does not fall below the minimum acceptable level
  - c. student choice is supported through a regulatory approach that enables innovation - critical for a well-functioning market - rather than constraining new ways of doing things
147. The approach ensures that the conditions set a high bar to entry, but do not set unnecessary barriers to entry such as necessitating a track record which not all providers will have. As such, the initial conditions, and the evidence required of providers, will allow for the conditions to be met without a track record.
148. To minimise the burden of complying with the new regulatory framework, wherever appropriate the evidence required to demonstrate compliance with the initial registration conditions may be that used for existing processes – see chapter 9 for further details.
149. In addition, as part of its risk assessment, a provider will need to satisfy the OfS that it will be able to meet the ongoing registration conditions (see chapter 5 for detail). This will include being signed up to the Student Complaints Scheme of the OIA once registered.
150. The registration conditions are expressed as outcomes rather than inflexible, absolute values for each condition. The outcomes being judged will not be benchmarked, in the sense that the OfS will not test providers' performance only against others in the same group. Providers will be held to requirements based on

student needs and aspirations, not simply by comparison with their peers. Nor will the OfS rely on crude absolute thresholds. The OfS will use professional judgement, in a structured way, to evaluate whether a provider has demonstrated that they meet these conditions, taking account of the context which may include factors such as performance, size, complexity and student characteristics, and other factors.

151. For example, a provider may have low retention, linked to factors relating to their mode of delivery and student profile (such as distance learning, a large proportion of part-time provision or particular student characteristics). The OfS will take a flexible approach, using data and intelligence, to set appropriate indicators of performance for an individual provider in light of that provider’s relevant context, rather than setting fixed targets on retention for all providers although this is an area where we will remain vigilant to ensure students (and the taxpayer) are deriving value for money.

## Part B: Initial conditions of registration

152. Table 4 below sets out an overview of the proposed initial conditions of registration and which categories of the register they apply to. These indicate which of the four student objectives and corresponding risks the conditions are primarily associated with (though many are relevant to other risks and objectives, too). No conditions are listed against the risk to value for money, as this is relevant to all the conditions.

**Table 4: Overview of initial registration conditions and which categories they apply to**

Initial registration conditions	Appr fee cap	Appr	Reg basic
<b>BASELINE INITIAL CONDITIONS</b>			
<b>Objective 1: all students, from all backgrounds, are supported to access, succeed in, and progress from, higher education</b>			
<ul style="list-style-type: none"> <li>Condition A1: “An Approved (fee cap) provider intending to charge fees above the basic amount for qualifying courses must have an access and participation plan approved by the OfS in accordance with HERA, and for any period in which the provider charges fees above the basic amount, the plan must be in force and the provider must take all reasonable steps to comply with the provisions of the plan.”</li> <li>Condition A2: “An approved provider or an approved (fee cap) provider charging fees up to the basic amount must publish an access and</li> </ul>	✓ (Higher fee limit)  OR  ✓ (lower fee limit)	✓	

participation statement and must update and re-publish this on an annual basis.”			
<b>Objective 2: all students, from all backgrounds, receive a high quality academic experience, and their qualifications hold their value over time in line with sector-recognised standards.</b>			
<ul style="list-style-type: none"> <li>Condition B1: “The provider must deliver well-designed courses that provide a high quality academic experience and enable a student’s achievement to be reliably assessed.”</li> <li>Condition B2: “The provider must support students, including through the admissions system, to successfully complete and benefit from a high quality academic experience.”</li> <li>Condition B3: “The provider must deliver successful outcomes for its students and these are recognised and valued by employers, and/or enable further study.”</li> <li>Condition C1: “The provider must ensure the value of qualifications awarded to students at the point of qualification and over time, in line with sector recognised standards.”</li> <li>Condition C2: “The provider must deliver courses that match the academic standards as they are described in the Framework for Higher Education Qualifications (FHEQ) at Level 4 or higher.”</li> </ul>	√	√	
	√	√	
	√	√	
	√	√	
	√	√	√
<b>Objective 3: that all students, from all backgrounds, have their interests as consumers protected while they study, including in the event of provider, campus, or course closure</b>			
<ul style="list-style-type: none"> <li>Condition D: “The provider must be financially viable and financially sustainable and must have appropriate resources to provide and fully deliver the higher education courses as advertised (thus enabling students to complete their courses), and enable the provider to continue to comply with all conditions of its registration”.</li> </ul>	√	√	
<ul style="list-style-type: none"> <li>Condition E1: “The provider must have in place adequate and effective management and governance arrangements to provide and fully deliver the higher education courses advertised, and to continue to comply with all conditions of its registration.”</li> <li>Condition E2: “The provider must adhere to its governing documents, which must be consistent with the public interest principles that are applicable to the provider”</li> <li>Condition E4: “Providers must demonstrate in developing their policies and procedures governing their contractual and other relationships with students that they have given due regard to relevant guidance as to how to comply with consumer law.”</li> </ul> <p><i>The OfS recommends that providers consult the CMA’s published guidance for higher education providers. Providers can ensure compliance with the law by seeking independent legal advice. If there is a change in the recommended guidance in future years, the OfS will inform providers in writing</i></p>	√	√	
	√	√	
<ul style="list-style-type: none"> <li>Condition F: “The provider must have in force a student protection plan which has been approved by the OfS (which sets out what actions they will</li> </ul>	√	√	

<p>take to minimise any impact on the students' continuation of study should the provider discontinue the course, subject, discipline or exit the market completely) and the provider commits to taking all reasonable steps to comply with the provisions of that plan."</p>			
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153. All initial registration conditions will remain as ongoing general registration conditions once a provider has registered so the requirement to comply with them will be ongoing, not only at the point of registration.

154. Please refer to the Guidance which includes the full list of initial and general ongoing registration conditions, along with proposed guidance to providers on meeting conditions of registration, and behaviours indicating compliance and non-compliance.

155. It should be noted that - other than different requirements for access and participation and receipt of grant - the baseline initial conditions for providers in the Approved categories are the same. All students, regardless of the level of loan or grant funding, should expect their provider to meet minimum baseline conditions.

156. By contrast, the requirements of the Registered basic category are restricted to the minimum required to ensure students have assurance that their courses are at higher education level and have access to the student complaints scheme. This is proportionate regulation reflecting that these providers will have no direct access to public funding or Government backed loans funding.

**Access and participation**

157. Access and participation is a unique area where market forces alone will not be sufficient to meet the ambitions of students and society. The OfS will take a different approach in this area from its other regulatory activities, regulating individual providers to drive improvement.

158. Access and participation plans will be required for Approved (fee cap) providers wishing to charge fees above the basic amount. These will need to be approved by the DFAP on behalf of the OfS (see Condition A1). There will be a simpler requirement on Approved providers and Approved (fee cap) providers charging fees up to the basic amount, but these providers will still have to demonstrate their commitment to access and participation by publishing an access and participation statement (see condition A2).

159. Widening access and promoting the success of disadvantaged students will be at the heart of the OfS's remit. It will have a duty which relates to equality of opportunity across the whole student lifecycle; with the aim of ensuring that students from

disadvantaged backgrounds can not only access, but successfully participate in and progress from higher education too.

160. OfS will also have a duty relating to student choice and opportunities, which it will consider in terms of a range of models of higher education – including new providers, work-based study, accelerated programmes and flexible provision for adults and social learners – which will facilitate higher education opening up to under-represented groups. OfS will intervene at the provider level in this area; market forces alone will not be sufficient to deliver the change needed.
161. The OfS will have a dedicated champion for widening participation, the DFAP, appointed by Ministers. With all widening participation and fair access responsibilities sitting within the OfS, there will be better focused expertise and a co-ordinated approach to this area. By combining the functions that are currently delivered separately by OFFA with the broader work of the OfS, and giving the work prominence through the Board, the OfS will be able to ensure the integrated approach that is needed to drive a step change on successful participation as well as access.
162. The OfS will not impose targets for widening access and participation activities on individual providers, in line with its duties in HERA designed to protect academic freedom and institutional autonomy. Instead, the expectation is that the OfS/DFAP will work with providers to ensure progress on these issues.
163. In approving access and participation plans, the OfS will focus on the risk that a provider does not ensure that students from all backgrounds are supported to access, succeed in, and progress from higher education, and it will expect greater commitment – in terms of investment, activity and progress on outcomes – for those providers where it identifies higher risk with regard to students from disadvantaged backgrounds and groups under-represented in higher education.
164. With access and participation plans the OfS may wish to consider in the future, as part of its risk-based approach to regulation, whether to introduce further innovation and flexibilities according to the level of risk posed by providers to the OfS's expectations on access and participation.

***Question: The initial conditions should provide reassurance that providers will be able to meet the general ongoing conditions without creating unnecessary barriers to entry. Given this, are the initial conditions appropriate?***

*Within your response to the question above, you can provide commentary on any of the conditions, with reference to the Guidance*

**Question: Do you agree or disagree with the proposed lists of public interest principles in the Guidance, and who they apply to?**

*The lists can be found in the Guidance.*

## **Part C: Registration process**

165. Providers will need to undergo a process of initial registration. This requirement to register applies to all providers wishing to be eligible for funding in the future, whether they are currently HEFCE funded, have specific course designation, or will be entering the higher education sector for the first time. Providers seeking eligibility for a Tier 4 licence will also need to register. Details of how and when providers need to register ahead of the 19/20 academic year are set out in chapter 9 and the document ‘Approach to transition – provider roadmaps’.
166. In order to register, a provider will need to demonstrate it meets the eligibility criteria of being an English higher education provider (set out in Box H) and state which of the three categories of the register it is applying for. The category they are registered in will then determine which initial conditions they will be required to demonstrate compliance with, prior to gaining registered status.

### **Box H**

#### **English higher education provider – definition for eligibility to register**

Only providers that are or intend to become English higher education providers, as defined in section 83 of HERA, can register with the OfS. There are three aspects to determining whether an entity is an English higher education provider:

1. Provision of higher education: this is defined as delivering a course of any description mentioned in Schedule 6 of the Education Reform Act 1988
2. English provider: under section 83 of HERA, an English higher education provider is defined as a provider whose activities are carried on, or principally carried on in England. “Principally carried on in England” will be taken to mean more than 50% of a provider’s activities are carried on in England. In assessing where a provider’s activities are carried on, the OfS will take “activities” to mean the activities that support the provision of higher education, i.e. the delivery of teaching, designing of courses, etc., not the learning (i.e. it is the location of the provision, not the location of students that will usually be the defining factor.)



3. Institution: providers can only be registered if they are an institution providing higher education.<sup>20</sup>

In order to determine whether an entity is an institution for these purposes, the OfS will consider the following principles:

- Institutions are usually, but not necessarily, separate legal entities. This is therefore not a defining characteristic of an institution.
- Institutions can consist of various component parts, including several parts which could each form a distinct legal entity.

Normally, institutions will have all of the following characteristics:

- They are established for a clear purpose other than gaining financial and/or regulatory advantage
- They have their own name and brand identity, which makes them clearly distinguishable from other institutions or entities, for both students and the general public.
- They have their own clearly distinguishable student body
- They have their own, distinct governance structures, governing body and governing documents. The governing body is sufficiently independent and not controlled by another entity (e.g. a parent), or identical or very similar to that of another entity.
- They have distinguishable finances, that allow for the identification of the institution's income and spend.

167. In submitting an application, a provider will be required to submit evidence which demonstrates it meets the initial registration conditions applicable to the registration category it is applying for. For applicants for approved and approved (fee cap), this evidence will be elicited in part by a quality review undertaken by the Designated Quality Body. Please refer to the Guidance for details on the evidence requirements.

168. Once an application has been submitted, the OfS will then make an assessment of evidence against each condition, drawing on assessor guidance and quality checks overseen by a panel of senior OfS staff to ensure consistency before

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<sup>20</sup> Providers may be designated as an institution by the Secretary of State under section 84 of HERA. Section 83 of HERA explicitly states that "institution" includes training providers, as defined in that section. The exception are providers designated by the Secretary of State under section 84 of HERA. Section 83 of HERA explicitly states that "institution" includes training providers

reaching a decision. During this process, questions may be asked and clarification may be sought from a provider.

169. For access and participation plans, subject to regulations regarding the approval procedure which may be made by the Secretary of State under HERA it is expected that there will also be a process of negotiation between the DFAP and providers, regarding whether a plan has is sufficiently bold and ambitious, is evidence led, and is sufficiently resourced, before a plan is approved.
170. Once the OfS is satisfied that a provider meets the initial conditions and the other requirements for registration, it will determine which ongoing conditions should apply to that provider, in accordance with the requirements of the registration category and on the basis of a risk assessment. It will also determine whether enhanced monitoring is required. Please refer to chapter 5 for further detail on the OfS's approach to risk assessment and monitoring and assurance.
171. If the provider meets the requirements for registration, the OfS will register the provider in the register.
172. If the OfS intends to refuse a registration application, it must follow the procedures set out in HERA section 4. These determine that the OfS must first notify the governing body of a provider of its intention to refuse registration, setting out the reasons and the method and timeframe (which must not be less than 28 days from that notification) for the governing body of the provider to make representations ahead of a final decision. The OfS must consider these prior to making its decision then inform the provider of its decision. If the decision is to register, it will confirm the provider's date of entry to the register and ongoing registration conditions. If the decision is taken to refuse registration, it must set out the grounds for refusal. The OfS would reserve the right to give appropriate weight to any new information which does not address its specific concerns.

## **Part D: Providers wishing to register as Registered basic**

173. A provider that wishes to be recognised as an English higher education provider, but which does not want to access Government funding or student support, or to obtain or maintain a Tier 4 licence or Degree Awarding Powers or University Title, may apply to be Registered basic. This category will provide a degree of confidence for students that is not present in the current system with providers in the Registered basic category being able to let students and other bodies know that they are recognised by the OfS as offering higher education courses.

174. The relatively limited requirements of the Registered basic category are intended to be proportionate, recognising that these providers will have no direct access to public funding or Government backed loans funding. In contrast, the Approved and Approved (fee cap) categories have a number of conditions linked to accountability for public investment because they receive public funds in some way.

175. We expect that providers interested in this category will include those which deliver courses leading to the grant of:

- a. an award by a UK degree awarding body or Ofqual-regulated awarding organisation
- b. an award by another type of UK awarding body or organisation
- c. an award by an overseas body with Degree Awarding Powers
- d. an award by a professional body
- e. the provider's own award

176. In order to register at Registered basic, a provider will need to demonstrate that it meets the eligibility criteria of being an English higher education provider, as set out in Box H. Providers will also be required to submit evidence that demonstrates that they are able to meet the initial condition C2, which requires that the provider provides courses which match the academic standards as they are described in the Framework for Higher Education Qualifications (FHEQ) at Level 4 or above.

177. Once registered, providers must then comply with general ongoing registration conditions (see chapter 5). These specify that Registered basic providers must:

- cooperate with the requirements of the higher education student complaints scheme operated by the OIA and make students aware of their ability to use the scheme;
- demonstrate that they provide courses which match the academic standards as they are described in the FHEQ at Level 4 or above; and
- provide timely and accurate information and cooperate with the OfS to enable the monitoring of their conditions and other activities under HERA (and nominate an accountable officer to be responsible for this).

## **Part E: Benefits of being an Approved or Approved (fee cap) registered provider**

178. Registered providers in the approved categories will be able to access a number of benefits, linked to their registered status.

### **Grant funding**

179. The Secretary of State will make regulations under section 39(3) of HERA which will determine the eligibility criteria for higher education providers to access OfS grant funding. By virtue of section 97(5) HERA, these eligibility criteria are also applicable to financial support granted by UKRI through Research England under section 97 HERA.

180. Eligibility for the following will be limited to providers in the Approved (fee cap) category.

- a. direct grant funding provided by UKRI through Research England under section 97 HERA (including quality-related research funding)
- b. direct OfS teaching grant funding or any other OfS payments

181. Approved (fee cap) providers will also be eligible to apply for research council funding.

182. Any registered provider registered in any of the categories will still be able to apply for a number of research grant sources, including competitive research grant funding from a broad range of programmes managed by Research Councils. However, to access these sources, they will need to meet criteria specified for “Independent Research Organisations” (IRO) by UKRI for access to Research Council funding. This will involve a separate validation process, although the OfS and UKRI will seek to coordinate and reduce duplication wherever possible, and the OfS will work with UKRI as they develop their process to minimise any burden on providers. A provider’s ability to access these sources of funding does not depend on their registration status, as the criteria for IRO status is set separately by UKRI.

### **Degree Awarding Powers (DAPs) and University Title (UT)**

183. Registered providers in either of the Approved categories which comply with all applicable registration conditions will be eligible to apply for Degree Awarding Powers and/or University Title.

184. In addition to the types of Degree Awarding Powers that exist currently (to award either foundation degrees only, all taught awards, or all taught and research

awards), these providers will be able to apply for more specific powers, e.g. up to Bachelor level or on a subject specific basis.

185. In addition, newer providers without a sufficient track record will be able to apply for Degree Awarding Powers in their own right for the first time, without having to rely on existing degree awarding bodies to validate their provision. This will help new, high quality providers enter the market more quickly, paving the way for more innovative provision, and creating greater choice for students.

186. Further details on the changes to the criteria and processes for Degree Awarding Powers and University Title, and which types of Degree Awarding Powers should be available for providers without a sufficient track record are set out in the separate consultation document [Simplifying access to the market: Degree Awarding Powers and University Title](#).

#### **Tier 4 licences**

187. The White Paper, [Higher Education: Success as a knowledge economy](#) stated that English higher education providers wishing to be eligible to make an application to the Home Office for a Tier 4 licence will first need to be brought into the higher education regulatory framework, and be in one of the approved categories on the OfS register. This will be required whether the provider is seeking public funding and a Tier 4 licence, or is solely applying to be able to recruit international students through a Tier 4 licence (and not seeking student support for domestic students).

188. The Home Office remains responsible for setting the eligibility and suitability criteria for a Tier 4 licence, and decisions on Tier 4 licences will remain solely with the Home Secretary. The proposals in this consultation do not constrain the ability of the Home Office to determine the requirement for educational oversight as part of the process for obtaining Tier 4 licences.

#### *Providers seeking public funding and a Tier 4 licence*

189. The Government proposes that any provider who meets the requirements for either Approved category, and is entered on the register, will be assessed as having met the necessary educational oversight requirements to render them eligible to apply to the Home Office for a Tier 4 sponsorship licence. Tier 4 sponsorship will be conditional on providers remaining on the register. Providers seeking public funding will need to meet the initial and ongoing conditions in order to satisfy the Tier 4 requirements for educational reviews. This would remove regulatory burden in the form of separate Tier 4 educational oversight checks, currently carried out for designated Alternative Providers alongside the checks required for specific course designation. If providers also deliver courses which are not regulated by the OfS, for

example further education, they will additionally need to obtain and maintain educational oversight checks from the relevant body.

#### *Providers solely seeking eligibility for a Tier 4 licence*

190. We recognise that the requirement for English higher education providers solely seeking eligibility for a Tier 4 licence to be entered on the OfS register represents a change for providers compared to the current arrangements. We have considered with the Home Office how best this requirement should be managed.

191. The OfS will work to ensure that providers deliver positive outcomes for students, regardless of where these students are from. Both international and domestic students should expect, and receive, a high quality education and experience. While not receiving public funding, these providers contribute to the overall international reputation of the UK higher education sector, and receiving a Tier 4 licence represents a significant benefit; providers solely seeking eligibility to apply to the Home Office for a Tier 4 licence will therefore need to apply to the Approved category to ensure the interests of the international students they recruit are protected.

192. We propose that providers solely seeking eligibility for a Tier 4 licence will be subject to the same general conditions (unless directly related to the receipt and management of public funding) as other providers in this category. They will also need to declare that they are seeking registration for the purposes of being eligible to apply for a Tier 4 licence and are not seeking public funding.

#### ***Question: Do you agree or disagree with the proposed approach on the application of conditions for providers wishing to seek a Tier 4 licence?***

193. Those providers that are required to obtain, and maintain, a Tier 4 licence, but do not qualify as “English higher education providers” under the definition in HERA, will be subject to the existing arrangements as defined by the Home Office.

#### *Difference in Tier 4 licence conditions by type of provider*

194. It is a matter for the Home Office to determine what requirements and conditions may apply to specific types of provider which wish to obtain a Tier 4 sponsor licence or to their students who are applying for a Tier 4 visa. As part of the wider consideration of the relationship between Tier 4 requirements and the new higher education regulatory framework, the Home Office is proposing that all providers registered in the Approved categories who have a track record of immigration compliance will benefit from the full privileges of Tier 4, including the ability of their

students to work and for eligible post-graduate students to bring their dependants. The Home Office will prepare further guidance on this in due course.

### Access to student support

195. Providers registered in the Approved categories will be able to access the student support system. Access to undergraduate higher education student support is governed by The Education (Student Support) Regulations 2011 (as amended). Eligible students can receive student support if they are studying a designated eligible course: the course must be listed in Schedule 2 of the 2011 Regulations. The Schedule includes:

- A first degree
- A Diploma of Higher Education
- A HND or HNC (or equivalent of the Scottish Qualifications Authority)
- A Certificate of Higher Education
- A course for the Initial Training of Teachers.

196. In addition, there are two types of course on the current list which the DfE is considering either removing from potential eligibility for support or clarifying the courses covered by these definitions because the definition is not entirely clear and may even be obsolete. These are:

*(7) A course in preparation for a professional examination of a standard higher than that of –*

- *examination at advanced level for the General Certificate of Education or the examination at higher level for the Scottish Certificate of Education; or*
- *the examination for the National Certificate or the National Diploma of either bodies mentioned in paragraph 3*
- *not being a course for entry to which a first degree (or equivalent qualification) is normally required; and*

*(8) A course –*

- *providing education (whether or not in preparation for an examination) the standard of which is higher than that of courses providing education in preparation for any of the examinations mentioned in paragraph 7 (a) or (b) but not higher than that of a first degree course; and*

- *for entry to which a first degree (or equivalent qualification) is not normally required.*

197. In the past, some courses leading to professional qualifications were supported under this provision. Currently, however, students studying professional qualifications are able to access student support only where study also leads to a qualification (listed above) if awarded by a body with UK Degree Awarding Powers, or the courses are “approved by” or “validated” by the UK Degree Awarding body. The Schedule 2 list of courses and the introduction of new loan products have expanded the range of courses which attract student support.

198. The DfE’s analysis shows that tiny numbers of students are recorded by the Student Loan Company and Higher Education Statistics Agency as receiving student support for courses that fall under paragraphs 7 and 8 and, in reality, many of those appear to be studying other courses, implying that there has been an error in the data returned by a particular institution.

199. The DfE, at present, receives a number of enquiries about the meaning of these paragraphs 7 and 8, which show that they are not well understood and are therefore, at the very least, in need of clarification.

200. The DfE’s preference is to remove these paragraphs entirely to help clarify the regulations, especially given that it is not aware of current courses falling under the provisions. We are keen to hear if there are any specific courses that currently rely on access to student support under paragraphs 7 and 8 and we could consider making a specific provision for those courses.

***Question: Do you agree or disagree that paragraph 7 and 8 should be removed from Schedule 2 of the Education (Student Support) Regulations 2011, which lists the types of courses that allow with access to the student support system? If you disagree, are you aware of any courses dependent on these provisions to be eligible for support?***

### **Exempt Charity Status**

201. As set out in the white paper, the Government intends that the OfS will take over HEFCE’s role as Principal Regulator of Exempt Charities, allowing the continuation of existing exempt providers’ status where the OfS will have sufficient regulatory oversight. As the OfS will regulate more providers than HEFCE is currently able to, this is also an opportunity to consider the case for extending the scope of exempt status to a wider range of registered, charitable providers. Please see Annex C for more detail, including consultation questions on behalf of the Secretary of State.



**Question: Do you agree with the proposed approach for the benefits available to providers in the different registration categories?**

## **Part F: OfS registration fees**

202. The registration fees charged by the OfS are to be set by the Government through secondary legislation rather than by the OfS in its regulatory framework. Information is however provided here for context.
203. The operating costs of the OfS will be funded primarily through registration fees charged to the higher education providers that it regulates, starting from academic year 2019/20. This will bring the OfS's funding approach in line with that of other regulators and the general direction of travel that regulators should be funded by the market that they regulate.
204. From 14 December 2016 to 14 March 2017, the Government consulted on principles and proposals for calculating registration fees in its consultation [Office for Students: registration fees and other fees](#). It has drawn on these responses to develop more detailed proposals on which it is now holding a more detailed consultation which can be found here: [Registration fees](#).
205. Relevant parties are encouraged to read the registration fees consultation alongside this regulatory framework consultation where relevant, to inform their responses.

## Chapter 5 – On the register

### Part A: Ongoing general conditions

206. When the OfS grants an application for registration it will apply:

- a. mandatory general ongoing registration conditions,
- b. general ongoing registration conditions which apply to the registration category the provider has applied for (although the OfS can choose to dis-apply one or more of these conditions for the provider), and
- c. specific ongoing registration conditions. It will apply this discretion in accordance with section 7 of HERA which expressly requires the OfS to take a risk-based approach.

207. The initial registration conditions, set out in chapter 4 part B, will continue to apply as general ongoing registration conditions. In requiring a provider to continue to meet a certain baseline, this ensures the risks to students outlined in chapter 1 continue to be the focus of the OfS’s regulatory approach.

208. The general ongoing registration conditions, (which are in addition to the registration conditions set out under chapter 4 which are both initial and ongoing), are set out in Table 5 below. As outlined in chapter 4, these indicate which primary student objectives and risks the conditions are principally associated with, but this should not be taken to mean that the conditions have no relevance to the other objectives. No conditions are listed against the value for money objective, as this is relevant to the conditions as a whole.

**Table 5 – Overview of ongoing registration conditions and which categories they apply to**

Ongoing registration conditions (Note: these are in addition to the initial conditions set out under Table 4, which are also ongoing)	Appr Fee cap	Appr	Reg basic
<b>BASELINE ONGOING CONDITIONS</b>			
<b>Objective 1: all students, from all backgrounds, are supported to access, succeed in, and progress from, higher education</b>			
<ul style="list-style-type: none"> <li>• Condition A3: “The provider must comply with the Transparency Condition as set out in Section 9 of HERA”.</li> </ul>	√	√	
<b>Objective 3: that all students, from all backgrounds, have their interests as consumers protected while they study, including in the event of provider, campus, or course closure</b>			

<ul style="list-style-type: none"> <li>Condition E3: “The provider must provide to the OfS and publish in their annual financial statements information on the number of its staff members earning a basic salary of over £100,000 per annum. For staff earning a basic salary of over £150,000, this information must include details of total remuneration, and an explanation of how these remuneration packages were decided and justified.”</li> </ul>	√	√	
<ul style="list-style-type: none"> <li>Condition G: “The provider must cooperate with the requirements of the student complaints scheme run by the Office of the Independent Adjudicator for Higher Education including the subscription requirements and make students aware of their ability to use the scheme.”</li> </ul>	√	√	√
<ul style="list-style-type: none"> <li>Condition H: “The provider must publish information about its arrangements for a student to transfer. If the provider lacks such arrangements, it must explain how it facilitates the transfer of a student.”</li> </ul>	√	√	
<b>OTHER ONGOING REGISTRATION CONDITIONS</b>			
<b>Notification of changes to register to maintain accuracy</b> <ul style="list-style-type: none"> <li>Condition I: “The governing body of the provider must notify the OfS of any change of which it becomes aware which affects the accuracy of the information contained in the provider’s entry in the register.”</li> </ul>	√	√	√
<b>Provision of information the OfS and designated bodies require to perform their functions</b> <ul style="list-style-type: none"> <li>Condition J1: “For the purposes of assisting the OfS in performing any function conferred on the OfS under any legislation, the governing body of a provider must: <ul style="list-style-type: none"> <li>(a) provide the OfS or a person nominated by the OfS, with such information as the OfS specifies at the time and in the manner and form specified by the OfS;</li> <li>(b) permit the OfS to verify, or arrange for the independent verification by a person nominated by the OfS, of such information as the OfS specifies at the time and in the manner specified by the OfS and notify the OfS of the outcome of any independent verification at the time and in the manner and form specified by the OfS;</li> <li>(c) take such steps as the OfS reasonably requests to co-operate with any monitoring or investigation by the OfS, in particular (but not limited to) providing explanations or making available documents to the OfS or a person nominated by it or making available members of staff to meet the OfS or a person nominated by it.</li> </ul> <p>The requirements in paragraphs (b) and (c) do not affect the generality of the requirement in paragraph (a).</p> </li> <li>Condition J2: “For the purposes of the designated data body’s duties under sections 64(1) and 65(1) of HERA, the provider must provide the designated data body with such information as the designated data body specifies at the time and in the manner and form specified by the designated data body”.</li> </ul>	√	√	√ (limited)
<b>Mandatory fee limit</b>	√		

<ul style="list-style-type: none"> <li>Condition K: “A provider in the Approved (fee cap) category must charge fees within the prescribed limits determined by their quality rating or access and participation plan.”</li> </ul>			
<b>Facilitate electoral registration</b> <ul style="list-style-type: none"> <li>Condition L: “The provider must comply with OfS guidance on facilitating electoral registration in cooperation with electoral registration officers.”</li> </ul>	√	√	
<b>Pay OfS and designated bodies’ fees</b> <ul style="list-style-type: none"> <li>Condition M: “The provider must pay its annual registration fee and other OfS fees in accordance with regulations made by the Secretary of State and, where applicable, fees charged by the designated bodies.”</li> </ul>	√	√	√ (OfS fees only)
<b>Terms and conditions of funding</b> <ul style="list-style-type: none"> <li>Condition N: “The provider must comply with any terms and conditions attached to financial support received from the OfS and UKRI under sections 41(1) and/or 94(2) of HERA. A breach of such terms and conditions of funding will be a breach of this registration condition.”</li> </ul>	√	√ <sup>21</sup>	√ <sup>21</sup>
<b>Accountability</b> <ul style="list-style-type: none"> <li>Condition O: “The governing body of the provider accepts responsibility for its interactions between the provider and the OfS, and the provider’s compliance with all of its registration conditions. To assist and enable it to discharge this responsibility, the governing body must designate a senior officer as the ‘accountable officer’ who shall act as the principal contact for the OfS, and must notify the OfS accordingly.”</li> </ul>	√	√	√
<b>Teaching Excellence and Student Outcomes Framework participation</b> <ul style="list-style-type: none"> <li>Condition P: “The provider must participate in the Teaching Excellence and Student Outcomes Framework (TEF).”</li> </ul>	√	√	

**Application of conditions during transition (between registration and start of 19/20 academic year):** To note that the OfS would require conditions F, I, J1 and O to take effect as ongoing conditions immediately after registration. All other conditions, including those that are initial conditions, would not become ongoing conditions of regulation until the start of 19/20, although the OfS will consider as part of its risk assessment immediately following registration whether a provider will be able to meet their ongoing conditions once these are applied from 19/20

209. Please refer to the Guidance which includes the full list of initial and general ongoing registration conditions with proposed guidance to providers on meeting the registration conditions and the behaviours indicating compliance and non-compliance.

210. Providers will be required to continue to meet these general ongoing registration conditions in order to remain on the register. Parts B – C of this chapter outline the approach the OfS will take to risk assessments (at the point of registration and on an ongoing basis), monitoring, and interventions where there is a risk that a provider

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<sup>21</sup> This condition is only applicable to providers in receipt of grant funding from either UKRI or the OfS, the majority of which will be registered in the Approved (fee cap) category. For more information, please refer to Condition N

may breach its general and specific ongoing conditions or the provider has already breached such conditions.

**Question: Do you agree or disagree with the general ongoing registration conditions proposed for each category of provider (see the Guidance for further detail)?**

## **Part B: The OfS's approach to risk assessment**

211. Section 75(4) of HERA requires the OfS to perform its functions in relation to a registered higher education provider in proportion to the OfS's assessment of the regulatory risk posed by the provider. The OfS's assessment of a provider's risk is therefore a critical component of its regulatory approach.

212. The following section sets out the OfS's proposed approach to risk assessment and the way that this will operate at the point of initial registration and on an ongoing basis. In developing this approach, the following considerations have been taken into account:

- a. the need to identify and respond to increased risk to student outcomes and value for money before risk crystallises and registration conditions are breached
- b. the OfS's duty to be proportionate in its regulation of providers and its aim to reduce regulatory burden where possible whilst ensuring that action can be taken, where required, by its statutory duties<sup>22</sup>
- c. the need continually to refine and adjust its approach to risk assessment to protect student outcomes
- d. the principles of best regulatory practice, including compliance by OfS with the Regulators' Code while exercising its functions. In particular, that OfS's risk-based approach should be proportionate and transparent and that the OfS is consistent in its risk-related dialogue with individual providers

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<sup>22</sup> In terms of its statutory duties, section 7 of HERA requires the OfS to ensure that the initial registration conditions applicable to a provider and the ongoing registration conditions it is subject to are proportionate to the regulator's assessment of that provider's level of regulatory risk. The regulatory risk is the risk of the institution, once registered, failing to comply with regulation by the OfS. In light of the duties under this section, the OfS must keep the initial registration conditions both applicable to a provider and also keep its ongoing registration conditions under review

213. Underpinning this approach to risk assessment is an expectation that providers will behave responsibly, transparently and collaboratively. They will be expected to provide sufficient and reliable data and information on an ongoing basis (or as requested by the OfS to follow up on identified risks). The OfS's approach will be based on cooperation with regulated providers, in the best interests of students.
214. The OfS will encourage providers to raise problems proactively (where they risk dropping below baseline requirements), on the basis that the regulator would prefer to work with providers to resolve issues, rather than needing to use its regulatory powers to ensure compliance. If providers fail to behave transparently and to embrace this collaborative regulatory approach, the OfS will make proportionate use of its range of interventions in order to protect student outcomes and value for money.

### **Risk assessments at the point of registration**

215. Before registering any provider, the OfS will, as part of determining whether a provider meets the relevant initial registration conditions, carry out a formal risk identification and assessment against each of the ongoing conditions. The purpose of the risk assessment process is to determine the level of risk that a provider will breach a general ongoing registration condition and to ensure that the ongoing regulatory requirements of, and engagement with, a provider are sufficient to mitigate any specific increased risk of future breach. This risk is assessed in terms of both the probability of a breach and the potential severity of its impact.
216. As well as looking at individual conditions, the OfS will also consider the pattern of risk for the provider, assessed as a whole – across all ongoing registration conditions – to ensure that any regulatory action can be tailored specifically to the exact nature of that risk. The OfS will also seek to understand the underlying causes of any increase in risk, in particular paying close attention to circumstances where an increased risk in one specific area, or a weak response to that risk, may indicate wider concerns in the provider, for example in its governance arrangements.
217. The risk assessment of a provider will inform decisions about:
- a. whether a provider can be registered
  - b. what ongoing registration conditions are applied to the provider, ensuring these are proportionate to the level of assessed risk. Specific conditions would be put in place to provide additional mitigation for specific areas of risk (see chapter 5, part C)

- c. how the OfS intends to approach the ongoing monitoring of that provider, such that it is proportionate to the level of assessed risk

218. The risk assessment at the point of registration will not be published on the register, as the actions the assessment generates (specific conditions, for example) will be published on the register instead. The OfS is also mindful of the potential for such assessments to be taken as judgements on a provider's quality, which they are not.

219. To note, some of the general ongoing conditions may be dis-applied for an individual provider when the provider is first registered or thereafter. In determining whether this would be appropriate, the OfS will give due consideration to those conditions that are fundamental to ensuring student outcomes are protected and which also allow the OfS to still carry out its regulatory function effectively.<sup>23</sup> The expectation however is that conditions will seldom be dis-applied, as they are all closely aligned with protecting outcomes for students.

### **Case study: The Prudential Regulation Authority A risk-based approach to regulation**

The following case study is a summary of the Prudential Regulation Authority (PRA)'s risk-based approach to regulation. Like the PRA, the OfS will take a risk-based, proportionate, and judgement-based approach that seeks to identify and respond to emerging risks early on. The OfS can learn from the PRA's structured approach to assessing risk, the sophisticated way it uses judgement alongside data and how it weights supervision towards those issues and firms that pose the greatest risk.

The PRA was created as a part of the Bank of England by the Financial Services Act (2012) and is responsible for the prudential regulation and supervision of around 1,500 banks, building societies, credit unions, insurers and major investment firms. This includes a handful of very large UK-headquartered firms that are both systemically important financial institutions globally, and significant to the stability of the financial system domestically. It aims to promote the safety and

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<sup>23</sup> Specific conditions can be applied on registration, or set later by following the procedure as laid out in section 6 of HERA. This risk assessment will have at its core the requirements of each ongoing condition, along with the other general duties the OfS must have regard to, as set out in section 2 of HERA.

soundness of the firms it regulates, protect insurance policyholders, and to facilitate effective competition.

The PRA advances its objectives using two primary tools: through regulation it sets standards or policies that it expects firms to meet; and through supervision, it assesses the risks that firms pose to the PRA's objectives and, where necessary, takes action to reduce them. These tools are judgement based, forward looking, and focused on those issues and those firms that pose the greatest risk to the stability of the UK financial system and policyholders.

The PRA's approach to assessing risk includes the potential impact a firm folding could have on the financial system, its proximity to failure and resolvability, the context in which the firm operates (including system wide risks) and a bespoke selection of activities which supervisors deploy as they judge necessary. The PRA weights its supervision towards issues and firms that, in its judgement, pose the greatest risk to the stability of the UK financial system, and to insurance policyholders. The composition, frequency and intensity of its supervisory activities vary, reflecting the particular circumstances of a firm.

The PRA does not operate a zero-failure regime, but seeks to ensure that any firms that do fail do so in a way that avoids significant disruption to the supply of critical financial services. For example, through compensation schemes for depositors and policyholders. Judgements about a firm's proximity to failure are captured within the PRA's Proactive Intervention Framework, which is designed to ensure that the PRA identifies and responds to emerging risks at an early stage

Under this approach, firms that are unlikely to have a significant impact on an individual basis, but which still have the potential to cause significant disruption collectively (for example, small credit unions or insurers), are supervised on a portfolio basis and examined individually only occasionally – for example where a risk has crystallised. By contrast, large, complex firms are subject to detailed supervision at an individual-firm level and will have a named supervisory contact.

The OfS will also adopt a proportionate, risk-based approach, focusing regulatory efforts on those providers that pose the greatest risk to student interests. Although the context is completely different, the OfS will learn from the PRA's structured approach to risk, and the use of judgements alongside data to react to events in a sophisticated way.



## Risk profile for an individual provider

220. The risk assessment of individual providers at registration will generate an individual risk profile against the ongoing conditions. This risk assessment will subsequently be updated through ongoing monitoring by the use of lead indicators and through provider specific enhanced monitoring where applied (see chapter 5 part C, for further detail on the risk monitoring approach). Through this mechanism, the OfS will maintain an audit trail of its assessment of risk for an individual provider and the actions taken in response to any increase in risk.
221. The individual risk profile will ensure that the OfS is able to tailor its monitoring to any areas of increased risk and to apply specific registration conditions where these are deemed necessary to mitigate particular areas of risk. It will also ensure that the OfS has a view of risk across all conditions that apply to an individual provider, again, based upon probability of breach and severity of potential impact.
222. This approach to risk assessment is designed to deliver a proportional regulatory approach to provider risk, which places the responsibility on providers to address any areas of increased risk identified by the OfS. This approach is in line with the OfS's general approach to regulation and with its focus on protecting the interests of students.
223. OfS will pay particular attention to those providers with a risk profile that suggests increased risk across a number of areas, and/or where there is or has been a breach of one or more conditions, and/or where there are concerns about a very significant or imminent breach and a severe impact upon student outcomes as a result. These providers will constitute a group which are likely to be subject to significant intervention by the OfS, until such time as increased risk has effectively been mitigated or a breach resolved.
224. We do not, however, propose that OfS should assign an overall summative 'risk rating' or classification for an individual provider (i.e. it will not divide providers into high risk / low risk / medium risk, or apply RAG ratings). Such an approach would artificially group providers with diverse types of risks and differing probability of breach and would therefore not be a useful comparative tool. This approach could also unfairly penalise newer or more innovative providers, with less of a 'track record' and historical performance data on which to base a risk assessment. Such classifications could also, if made public, be misleadingly treated as equivalent to judgements on a provider's quality and have an unnecessary reputational impact upon them. For these reasons, having regard in particular to the OfS's general duties and the OfS's publication requirements in relation to registration conditions and sanctions, we do not consider it appropriate for the OfS to publish individual risk

assessments or risk profiles. We believe publication could in fact be harmful to the OfS's regulatory functions (for example, by creating confusion, potentially giving providers insights which allow them a commercial advantage and impacting on the OfS's ongoing relations with providers).

## **Australian Tertiary Education Quality and Standards Agency: Case study of an outcomes-focused higher education regulator**

This case study looks at the Tertiary Education Quality and Standards Agency (TEQSA)'s journey as an HE regulator, the development of TEQSA's core focus on student outcomes and how this is woven into their twin processes of standards-based and risk-based regulation. Just as it is for TEQSA, the assessment of provider risk will be critical to the OfS's model. The OfS can also learn from TEQSA's approach to promoting a culture of self-assurance – the OfS expects providers to develop their own robust approaches to risk identification, assessment and management.

### **TEQSA's regulatory approach**

Established in 2011, TEQSA regulates and assures the quality of Australia's higher education providers to safeguard the interests of all current and future students studying within Australia's higher education system. It does this primarily through the registration and re-registration of providers, and accreditation and re-accreditation of courses. These processes recur up to every seven years. When exercising its powers TEQSA is guided by three principles: regulatory necessity, reflecting risk, and proportionate regulation.

TEQSA's model is built on a twin approach of standards and risk-based regulation. Risk assessments focus on the most important risks across the sector that can be readily measured on a regular basis. Assessment processes, such as a renewal of registration, involve a deeper assessment of evidence to determine compliance with the Standards.

From TEQSA's establishment and its continuing development the regulator has been on a journey towards an ever-greater focus on outcomes-based regulation of Australian higher education providers. Linked to this, TEQSA also places significant emphasis on promoting and facilitating a culture of effective self-assurance by providers. This strong focus on outcomes has shaped the development of the twin elements of TEQSA's regulatory approach and is also central to recent efforts to more effectively integrate these twin processes.

### **Standards-based regulation**

TEQSA registers and evaluates the performance of higher education providers against the Higher Education Standards Framework (Threshold Standards).

All providers must meet this minimum baseline in order to enter and remain within Australia's higher education system. The standards are developed and promulgated independently of TEQSA by the Higher Education Standards Panel which is made up largely of representatives from providers.

The Standards encompass the matters that a provider would be expected to address in the course of understanding, monitoring and managing its higher education activities and any associated risks. They are organised into seven major 'Domains':

1. Student Participation and Attainment
2. Learning Environment
3. Teaching
4. Research and Research Training
5. Institutional Quality Assurance
6. Governance and Accountability
7. Representation, Information and Information Management

The TEQSA standards apply to all providers, offering courses leading to a regulated higher education award, irrespective of where and how a course is delivered. While all providers must demonstrate adherence to the Threshold Standards, TEQSA assesses these in the context of each provider's circumstances. The Framework has been structured to align with the student experience or 'student life cycle' i.e. as they progress from prospective students through to the award of a qualification.

### **Risk-based regulation**

To assure quality and standards TEQSA undertakes an annual cycle of risk assessments of all providers. This is primarily a desk-based exercise based on an annual national collection, supplemented with an annual data return from certain providers.

The risk being assessed is that a provider fails to meet the threshold standards on student outcomes – primarily because a provider has failed to meet academic standards. Risk assessments focus on four areas to support TEQSA's overall evaluation:

- a. regulatory history and standing – highlights any risks to academic standards identified through previous TEQSA assessment processes
- b. student profile and outcomes – Cohorts completed, Student load, Attrition rate, Progress rate, Completions, Graduate satisfaction, Graduate destinations
- c. staff resources and profile – Senior academic leaders, Student to staff ratio, Academic staff on casual work contracts
- d. financial viability and sustainability

Considered together, these areas provide coverage across the main aspects of providers' operations and all contribute to a view of potential risks to academic standards.

## Part C: Monitoring of risk for registered providers

225. Once a provider is registered, the OfS will undertake routine monitoring activities to ensure that any increased risk of non-compliance (based upon probability and likely severity of impact) can be identified and decisive action taken before the risk crystallises, allowing the OfS to limit the exposure of students and taxpayers.

226. There are two strands of risk monitoring activity which are designed to enable the OfS to respond proportionately to 'regulatory risks' posed by regulated providers<sup>24</sup> as well as enabling early (and as close to real time as possible) identification of further risks:

- a. general monitoring applied to all providers, based on:
  - i. lead indicators (indicators constructed from reliable provider data and information flows, in as near real time as possible, that allow the OfS to anticipate future events and identify sector trends)
  - ii. 'reportable events' (a requirement to notify the OfS of material decisions/changes, such as a change in control of a provider)
  - iii. other intelligence, such as whistleblowing and student complaints
- b. enhanced monitoring and/or engagement in areas in which:
  - i. increased risk has been identified, through an initial risk assessment or a revision to a risk assessment as a result of the general monitoring process; or
  - ii. there has been a suspected or actual breach of conditions.

227. In addition to these two primary strands, the OfS will also use findings generated from other sector level monitoring to inform its risk monitoring at a provider level. For example, efficiency studies are intended to improve the economy, efficiency and effectiveness in the management of a registered HE provider. As they will be carried out at a provider level, findings from these may also inform risk monitoring. Table 6

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<sup>24</sup> This 'regulatory risk' primarily means the risk of non-compliance with ongoing baseline requirements, such as on quality and financial sustainability, management and governance arrangements. 'Other' general conditions will not require the same level of monitoring, as the OfS can straightforwardly identify whether for example a provider is meeting conditions to pay registration fees or providing information when asked.

provides an overview of the range of measures which will inform the OfS's monitoring of risk for registered providers.

**Table 6 – Overview of Monitoring of Risk for Registered Providers**

Type	Summary	Frequency
<p><b>Risk Assessment at point of registration</b></p>	<ul style="list-style-type: none"> <li>Carried out at point of applying to join the register</li> <li>To assess what ongoing and general registration conditions are proportionate to the assessed level of risk.</li> <li>Generates an individual risk profile for each provider, then reviewed and updated based on ongoing monitoring and wider sectoral intelligence..</li> </ul>	<ul style="list-style-type: none"> <li>For all providers at point of registration</li> <li>Drafted at point of accessing the register and reviewed on an ongoing basis, according to findings from <b>General Monitoring, Random Sampling, Efficiency Studies</b> and <b>Monitoring for wider purposes</b></li> </ul>
<p><b>General Monitoring</b></p>	<ul style="list-style-type: none"> <li>To identify changes which may indicate a shift in the risk to a provider continuing to meet the general ongoing conditions.</li> <li>Measured by: <ul style="list-style-type: none"> <li>- <b>lead indicators</b> (paras 233-240)</li> <li>- <b>reportable events</b> (paras 241-242)</li> <li>- <b>other intelligence and sources of information</b> (i.e. whistleblowing, complaints) (paras 243-245)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>For all providers</li> <li>On an ongoing basis</li> </ul>
<p><b>Enhanced Monitoring / Engagement</b></p>	<ul style="list-style-type: none"> <li>Where an increased risk or suspected/actual breach of conditions by a provider is identified</li> <li>Based upon a provider's individual risk profile (<i>not summative risk ratings or classifications such as RAG</i>), <b>risk assessment</b> and OfS evaluation of the risk type and potential severity of impact</li> <li>Only for providers presenting with significant risks to outcomes for students</li> </ul>	<ul style="list-style-type: none"> <li>Provider-specific</li> <li>Based upon individual provider risk profile and OfS evaluation of probability and potential severity of risk/breach.</li> </ul>
<p><b>Random Sampling of providers</b></p>	<ul style="list-style-type: none"> <li>To provide assurance on the effectiveness of the OfS <b>general monitoring</b> approach</li> <li>Not intended primarily to review risk at a provider level, but will provide additional provider level data around risk</li> </ul>	<ul style="list-style-type: none"> <li>5% of providers annually.</li> <li>Once sampled, provider is exempt for 3 years (but still subject to <b>general monitoring</b>)</li> </ul>
<p><b>Efficiency Studies</b></p>	<ul style="list-style-type: none"> <li>HERA S.69 gives the OfS the ability to ensure higher education providers are delivering value for money for students and the taxpayer</li> <li>Where <b>general monitoring</b> or <b>random sampling</b> raises concerns on a provider's efficiency, the OfS may also deploy this power as part of its risk-based approach</li> </ul>	<ul style="list-style-type: none"> <li>Targeted (based upon risk assessment)</li> </ul>
<p><b>Monitoring for wider purposes</b></p>	<ul style="list-style-type: none"> <li>HERA Statutory Duties: <ul style="list-style-type: none"> <li>S.68 – to monitor financial sustainability</li> <li>S.38 – to monitor student transfers</li> </ul> </li> <li>OfS will rely upon <b>lead indicators</b> and financial statements and forecasts used for <b>general monitoring</b>, with no additional burden upon providers envisaged.</li> </ul>	<ul style="list-style-type: none"> <li>All providers through general monitoring</li> <li>Ongoing</li> </ul>

## Approach to general monitoring

228. The approach to general monitoring will be designed to identify where further investigation is necessary to confirm whether or not risk has increased in a particular area for an individual provider. The OfS will use ‘lead indicators’ constructed from regularly obtained reliable data from providers, alongside ‘reportable events’ that providers must report to the OfS. It will also make use of wider sector, national and international strategic intelligence relating to the sector and/or individual providers, where appropriate. For example, the OfS may become aware of issues with the overseas financial guarantor of a registered English HE provider, which it may want to investigate further.

229. For example, to identify any potentially increased risk of a breach of a provider’s financial sustainability condition, the OfS will use a composite lead indicator compiled from the annual financial statements (which providers are required to submit under the financial sustainability condition) and a provider’s financial forecasts. The indicator will be complemented by sector-wide intelligence, trends identified by the OfS, and any reportable events notified to the OfS. If no events are reported, and the lead indicators do not give cause for concern, the OfS will take this as reassurance that there is no increased risk of a breach of the provider’s financial sustainability condition.

230. It is only where these sources of information suggest that further investigation is necessary that the OfS will engage with the provider to seek further information and make a judgement about whether appropriate action is necessary and being taken by the provider. The purpose of this dialogue will be to obtain assurance as to whether the conditions continue to be met and to reassess the risk of future non-compliance. Regulatory intervention, such as the imposition of specific conditions, will not be taken on the basis of lead indicators themselves but once the OfS has established through further assessment that the risk probability has indeed increased. Sanctions will not be applied unless conditions have been breached. See chapter 6, part E for information on interventions, in line with the OfS’s proportionate approach to risk.

231. This targeted approach to monitoring allows the OfS to discharge its general duty to use its resources in an efficient, effective and economic way. This means that the OfS will not systematically reassess the compliance of each provider with each of its registration conditions on a scheduled cyclical basis – HEFCE’s Annual Provider Review and DfE’s annual re-designation cycle will be no more.

232. In the case of access and participation plans, and in keeping with the risk-based regulatory approach, the OfS will focus on the risk that a provider does not ensure that students from all backgrounds are supported to access, succeed in and progress from higher education. Any enhanced monitoring will be dependent on the risk, assessed at the time of the plan being considered for approval, that a provider’s



plan will not deliver the aims around access and participation. The OfS will consider whether the risks of a provider not meeting these aims are changing, based on those lead indicators which inform this assessment.

233. The OfS will be able to use the range of data and evidence available to it, including through the Transparency Condition, to monitor progress against a provider's access and participation plan. The OfS may provide further technical guidance on the monitoring arrangements of access and participation activities in accordance with its monitoring objectives, replacing the previous guidance from OFFA.<sup>25</sup>
234. Individual providers will be expected to bring areas of increased risk to the attention of the OfS before the regulator becomes aware of these through its own monitoring processes. This includes the requirement to notify the OfS of particular 'reportable events' but also extends beyond these issues to any area in which the risk of a breach of an ongoing registration condition has increased. The OfS would not expect the provider to highlight all risks but rather to demonstrate sound judgement as to where it considers that mitigation may not be sufficient to prevent a breach of an ongoing general or specific condition.
235. As it conducts its monitoring activities, the OfS will update as necessary the risk profile for an individual provider. For example, notification of a 'reportable event' such as a change in ownership or the provider's corporate structure would prompt a further risk assessment of that provider in relation to its ongoing conditions for governance.

### **Lead indicators**

236. The OfS will identify a small number of lead indicators that aid early identification of whether providers are at increased risk of a breach to their baseline ongoing conditions. These indicators will be based on regular flows of reliable data and information from providers and additional data sources. Lead indicators are expected to include, but not be limited to, the following:

- TEF performance
- applications and acceptances for students with different characteristics

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<sup>25</sup> <https://www.offa.org.uk/wp-content/uploads/2016/11/How-to-complete-your-2015-16-monitoring-return-web.pdf>

- overall student numbers and, in particular, patterns that might suggest unplanned and/or unmanaged over- or under-recruitment
- changes in student entry requirements and the qualifications profile of students on entry
- non-progression and non-completion rates
- the number, nature and pattern of student complaints to the OIA
- degree and other HE outcomes, including differential outcomes for students with different characteristics, or where there is an unexpected and/or unexplained increase in the number of firsts and 2:1s awarded
- graduate employment and, in particular, progression to professional jobs and postgraduate study
- composite financial sustainability indicator based on annual financial statements and forecasts

237. The lead indicators are likely to include elements that do not, in themselves, reveal areas of weakness or concern for an individual provider, but simply flag possible increased risk, such as a rapid increase or decrease in student numbers. The OfS will therefore not just use ‘triggers’ or performance thresholds to monitor risk, preferring a more flexible approach which takes into account the context around an individual provider.

238. In some circumstances, absolute performance against an indicator may form part of the overall context for assessing risk, particularly where a lead indicator suggests that a provider has dropped below baseline ongoing conditions. For example, when monitoring provider non-continuation rates, an increase in this rate for an individual provider could mean performance had worsened. However, this level of absolute performance also needs to be considered in the context of performance across the sector as a whole and might be considered to be relatively low risk in the wider context.

239. The OfS will seek to ensure that the selection and specification of ‘lead’ indicators allows the identification of increased risk before this crystallises. This means that indicators that provide strong signals of likely future risk (for example significant shifts during the student recruitment cycle) and data trends over time will be more useful than data that retrospectively reveals where problems have already occurred.

240. The OfS will ensure that its lead indicators allow it to identify increased risk to all students from all backgrounds, for example by splitting student outcome indicators for different student characteristics in addition to monitoring access and participation plans. The OfS will also pay particular attention to outcomes achieved for different types of students (e.g. undergraduate / postgraduate).
241. To remain effective and proportionate as a regulator, the OfS will test which lead indicators remain most effective in identifying increased risk, and will ensure that the suite of indicators provide sufficient coverage of the areas of regulatory concern. While the starting point is a consistent approach for all providers, the OfS will also consider whether different indicators should be used for providers with different characteristics. The OfS will also take steps to ensure that the lead indicators can adapt to changes in the sector landscape, for example a significant increase in the base rate for borrowing might prompt a reconsideration of indicators on financial risk.
242. The provision of reliable and timely data to the OfS and the DDB is central to a light-touch, risk-based and proportionate approach to monitoring and regulation working effectively. This data requirement is therefore not intended as a regulatory burden upon providers but rather they will provide the information that then allows the OfS to be an effective and proportionate regulator. It is anticipated this data will be largely quantitative and generated as a result of a provider's existing management functions, minimising the burden upon providers and allowing for greater consistency, comparability and objectivity when looking across a range of providers.
243. The OfS recognises that while it aims for consistency in its approach to obtaining reliable and timely information from all providers, not all providers (primarily those new to the sector) will start from the same base level in terms of historical data or the maturity of their internal management systems. The OfS will therefore consider a transition period for all providers around providing data to the required standards. For new providers a bespoke requirement for formulating their data returns will be determined when they apply to register. If successfully registered, these requirements will be reviewed on an ongoing basis as these providers mature. However, the same standards of data reliability and timeliness will apply to all providers regardless of size, type or maturity.

### **Reportable events**

244. In relation to the ongoing registration condition J1 (see Guidance), providers will be required to notify the OfS of certain types of changes or events that would not usually be picked up by data flows alone. Such 'reportable events' are expected to include, but not be limited to, the following:

- changes in senior leadership
- changes resulting in change of ownership
- where the provider becomes aware of suspected fraud or financial irregularity

245. These events or changes may prompt the OfS to undertake a reassessment of risk in relation to one or more ongoing registration conditions. The OfS will then use this risk assessment to determine whether any further regulatory action is required such as the imposition of specific registration conditions and/or increased monitoring. For example, the OfS might reassess the financial sustainability of a provider, and the effectiveness of governance arrangements, if it is notified that a merger is taking place. Similarly, if a change of ownership is judged to be a major risk, the OfS would investigate the new owner and may impose additional conditions.

### **Other sources of information about particular providers**

246. The OfS will use lead indicators and reportable events to underpin its general monitoring of individual providers. However, this does not mean that it will ignore other sources of information about particular providers. The OfS will draw on information volunteered by providers and others, including whistle-blowers, as well as any wider experience it gains through other contact with that provider in particular.

247. In the process of complying with registration conditions (on transparency, senior staff remuneration, student transfer, access and participation plans and student protection plans) providers will also be expected to provide information around these to the OfS. This information will also be considered in the wider context of risk monitoring of individual providers.

248. The OfS will in particular seek input from students themselves – this may be in the form of insights in the form of lead indicators from the National Student Survey, complaints raised with the OIA or by inviting representations from individual students and student bodies.

### **Random sampling**

249. To identify if there are systemic risks not being identified by the means set out above (lead indicators, reportable events, sector intelligence), the OfS will use a process of random sampling of individual providers, to reassess their compliance against the registration conditions and determine if the conditions in place, both ongoing and specific, remain appropriate to the level of risk.

250. Random sampling is not intended primarily to provide confirmation about risk or compliance with conditions at a provider level, although it will provide information about this. Rather, its purpose is to provide:

- a. **assurance about the effectiveness of ongoing monitoring approaches** – by comparing findings from random sampling against findings from ongoing general monitoring, the OfS will be able to understand the effectiveness of its overall approach and decide whether changes to its approach might be required
- b. **incentives** – by moving from scheduled cyclical reviews to a random sampling approach, it is anticipated that providers will be incentivised to meet conditions on an ongoing basis, rather than focusing on proxies for performance in advance of a planned review
- c. **understanding of sectoral practice** – reviewing in detail how individual providers meet their conditions will be another means for the OfS to identify and recognise good practice

251. The initial probability of an individual provider being identified for random sampling will be equal for all providers, regardless of risk assessment and the conditions (ongoing or specific) in place for them. To maintain proportionality, no provider will be subject to further random sampling if it has already been sampled during the previous three years.

252. The OfS will begin by sampling 5% of all providers each year. The probability of being assessed will increase incrementally each year a provider is not sampled (and will reset once it has been). Increasing the chance of being sampled incrementally means providers would have an increasing chance of being sampled as time passed but that it would be very unlikely for a provider to reach, for example, a 50% chance of being sampled in any one year. This would mean that the systemic benefits of uncertainty would promote the desired provider behaviours, while creating a more proportionate system overall.

253. The sample pool will be categorised, with providers of different kinds grouped so that the sample represents the diversity of the sector (e.g. by different corporate forms or different positions on the register).

254. The OfS will use the reassessments undertaken through this process to confirm compliance with ongoing registration conditions, to update the individual provider's risk profile, and to put in place any specific conditions or enhanced monitoring required. Through random sampling, the OfS will better understand the extent to

which it is able to identify increased risk through monitoring. If significant new issues are identified by this process, the OfS will refine its overall approach to provider monitoring in response.

### **A ‘Year in the Life’ of a provider with a lower individual risk profile, under the OfS approach to risk monitoring.**

*This scenario outlines the anticipated risk monitoring process for a typical provider with a lower risk profile*

Acme College joins the register as an Approved provider and, in line with the registration category it has joined under, it has general ongoing conditions to meet, with none of these conditions being dis-applied. The risk assessment carried out by the OfS at the point of registration did not highlight any significant specific risks around financial sustainability, management or governance or any other of the initial conditions of registration, so no specific conditions are applied.

In line with this institution’s individual risk profile and the ongoing conditions of registration, Acme College then provide regular data returns, for the OfS’s **lead indicator** purposes, to the **designated data body** over the course of the academic year. These lead indicators are analysed in the context of the provider’s own risk profile and the context of wider sector intelligence – no changes are detected from the analysis of **lead indicators** which give the OfS cause to investigate further or to increase its level of monitoring of Acme (for example). The designated data body also remains content with the ongoing reliability of Acme’s data and does not flag any issues to the OfS which might also prompt the OfS to engage with Acme beyond **ongoing monitoring**.

At registration, Acme’s risk assessment found it had a transparent corporate structure and a capable senior leadership team – there are no **reportable events** notified to the OfS in relation to these over the course of the year. The OfS does not detect any other provider-specific issues from the wider monitoring and sector intelligence it gathers and so Acme’s risk profile remains unchanged over the course of the academic year. This means it remains subject to **ongoing monitoring by lead indicators**. In contrast to the current system, Acme will not be required to participate in an annual provider review, or a process of annual re-designation, or to comply with ad-hoc requests for additional data or reports.

Finally, Acme is also included, along with all other providers, in the sampling pool of approved category provider group for **random sampling** purposes. Acme isn’t randomly selected for reassessment of risk against the conditions of registration this

year - it will, however, now have a slightly increased chance of being selected the following year, along with all other providers not selected in this current academic year.

### **A ‘Year in the Life’ of a provider with a higher individual risk profile, under the OfS approach to risk monitoring.**

*The following scenario outlines the level of OfS engagement a provider with an increasing profile of risk might expect over the course of a year.*

Delta College applies to register as an Approved (fee cap) provider. In the course of the risk assessment carried out of all providers at registration, risk of future breach is identified around its management (condition E1) and reporting systems (condition J1), following a recent internal restructure. This risk assessment forms the basis of Delta University’s individual risk profile. Based upon this risk profile, the OfS applies a specific condition requiring Delta to submit a quarterly report on the work it is undertaking to refine its management and reporting systems. This is in addition to the general ongoing conditions Delta must meet (which may vary according to category/disapplication, in common with all other providers).

Delta provides its first regular data returns for **lead indicator** purposes under **ongoing monitoring** - no additional issues are identified as a result. Under the terms of its specific condition, Delta successfully delivers its first two quarterly reports on time. The OfS conducts an analysis of both and is satisfied with the rate and standard of progress detailed in the reports. Delta then notifies the OfS that the recently appointed Operations Director has suddenly left the university (a **reportable event**). Delta does submit its next quarterly improvement report, but it is clear that progress in improving its management systems has now stalled. The designated data body then reports that the reliability of Delta’s data, for **lead indicator** purposes, has worsened and it then misses its deadline for its next data return.

The OfS reviews these issues in the context of Delta’s **individual risk profile, its ongoing and specific conditions of registration** and the potential impact upon student outcomes. It decides the proportionate response in this case is to engage with Delta’s senior leadership team to determine what action they are taking to rectify these issues and to seek assurance on their plan to remedy these issues in time for their next data returns.

Delta confirm they have appointed a new Operations Director, who meets with the OfS, takes ownership for these issues and presents a robust revised plan to address them. The OfS monitor the next set of data returns and record an immediate improvement in the reliability and timeliness of the data returns.

In a parallel, non-regulatory, **random sampling** process, Delta are also selected from the pool of approved (fee cap) providers later that same year for reassessment. The reassessment of risk against all conditions confirms Delta now has far more robust internal management systems in place. In line with this reassessed risk profile, the OfS decides to remove the specific condition and Delta becomes subject to **ongoing risk monitoring** by the use of **lead indicators**, in line with the majority of other providers.

### Monitoring for wider purposes

255. This chapter has focused so far on the OfS when functioning as a regulator of individual providers. However, the OfS will also use monitoring for other purposes, as the OfS is also specifically required under section 38 of HERA to monitor student transfers (covered in chapter 2) and required under section 68 to monitor financial sustainability. In requiring information for these purposes it will, where possible, seek to rely on the same lead indicator data required for its monitoring of the conditions and follow the general principles of proportionality.
256. Section 68 of HERA obliges the OfS to monitor the financial sustainability of certain registered providers, broadly providers in the Approved categories. Those providers will be subject to the Financial Viability and Sustainability condition, as set out in the Guidance, which obliges them to submit annual financial statements and financial forecasts.
257. These statements and forecasts will usually give the OfS sufficient data and information to analyse the financial sustainability of the relevant providers, and it is therefore the intention not to ask for any additional information or data from providers to enable the OfS to fulfil this duty (though there may be exceptions, such as when data returns are incomplete or unreliable). Where relevant, the OfS may also draw on any other data and information submitted under any other registration conditions, or in relation to the OfS's other functions.
258. When compiling the financial sustainability summary for the annual report, which must reflect the OfS's conclusions, the OfS will take into account any wider developments and external factors it is aware of, such as changes in the costs of borrowing.



259. Additionally, the responsibility for monitoring the 'Prevent duty' in the higher education sector, as set out in the Counter Terrorism and Security Act 2015 (CTSA), is currently held by HEFCE and will be transferred to the OfS. This allows for effective monitoring both of providers' compliance with the duty and the action to be taken if they fail to comply.

### **Efficiency Studies**

260. Section 69 of HERA gives the OfS the ability to conduct efficiency and effectiveness studies on registered providers. This provision is designed to allow the OfS to ensure that providers are delivering value for money for students and taxpayers, recognising the very significant investment both of these groups make in higher education. The OfS views the objective of delivering value for money for students as an important aim for all providers, and efficiency studies will be a powerful tool by which the OfS will monitor how effectively providers are delivering this aspect of their remit.

261. The OfS will deploy this power as part of its risk-based approach to regulation and in particular the registration condition relating to senior staff remuneration. So, if it has concerns about the efficiency or effectiveness of a particular provider, identified through its risk monitoring and risk assessment processes, it may carry out a study to investigate whether the provider is providing value for money to both students and taxpayers. The OfS may also work collaboratively with providers across the sector, to benchmark efficient performance and highlight areas of good practice, benefitting students, providers and the public purse more generally.

***Question: Do you agree or disagree with the proposed approach to risk assessment and monitoring?***

### **Part D: Information approach**

262. The OfS will have oversight of the performance of the DDB's duties to collect, make available and publish appropriate higher education information, including data. To facilitate the OfS operating an effective and proportionate system of data collection, HERA gives the Secretary of State powers to designate a data body for higher education in England that can perform specific data functions, including data collection, data processing, data storage, data publication and provision. It is the responsibility of the OfS to consult on and recommend a suitable body for designation by the Secretary of State. A [separate DDB consultation](#) is taking place in parallel with this regulatory framework consultation. In appointing the DDB, the decision is with the Secretary of State.

263. Specifically, HERA sets out that the DDB (or if not appointed, the OfS) must fulfil the duties to compile and make available (s64) and to publish (s.65) appropriate information relating to higher education providers and the courses they provide.

264. In ensuring the DDB is meeting the needs of stakeholders, it will seek to minimise burden upon providers, in particular of meeting multiple and overlapping data collection requests.

265. This part of the consultation document sets out how the OfS will fulfil its information and data functions.

### **Purpose of information and data**

266. The information and data the OfS needs to access will be wide-ranging. It will need to be sufficient to support it in:

- a. establishing and monitoring a set of lead indicators to understand provider performance and regulate in a proportionate and risk-based way
- b. to monitor the sector as a whole, to understand trends and emerging risks at a sector level and work with the sector to address them
- c. to ensure students can access reliable and appropriate information to inform their decision over whether to study for a higher education qualification and, if so, identify which provider and course is most likely to meet their needs and aspirations
- d. operating the Teaching Excellence and Student Outcomes Framework and supporting the sector in meeting its transparency condition
- e. supporting statutory bodies such as the UKRI as well as the Department for Education, given its overall responsibility for the policy and funding framework in which the sector operates and a range of public bodies, some of whom may be prescribed in regulations in the delivery of their prescribed functions.

### **Designated data body (DDB)**

267. In parallel with this consultation, the DfE is consulting on who would be a suitable body to perform the information functions<sup>26</sup> and the OfS will have the option to adopt that consultation, which can be found [here](#). It is expected that the OfS will make its

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<sup>26</sup> As provided for under section 118 of HERA.

recommendation to the Secretary of State on who should fulfil this role in Spring 2018 and start to work with the new body once the Secretary of State has formally designated it.

268. The OfS must make oversight arrangements for holding the DDB to account. In addition, the DDB is required to prepare an annual report for the OfS around the performance of its duties to collect, make available and publish appropriate information.
269. The OfS must also inform the Secretary of State if it has significant concerns about how the DDB is performing its information duties or the continued suitability of the DDB to remain designated. The Government has been clear that it is committed to a system of collaborative regulation and that the DDB, as well as being able to perform the role expected of it, must command the confidence of the higher education sector.
270. The OfS however will, while working with the DDB, retain overall oversight for the appropriate information requirements placed on the sector, including the definition and collection of data sets. Through a service level agreement, the OfS will set out the detailed role the DDB will play in performing its duties, ensuring it meets the needs of stakeholders, ensures data is open and accessible and minimises the burden on providers.

### **How will the OfS approach information and data**

271. It is envisaged that reliable information and data will be collected, as they are now, through a combination of data returns from the sector, annual surveys, data sharing with other bodies and bespoke requests.
272. The **provision of reliable information** to the OfS is an ongoing registration condition. As part of the initial risk assessment when a provider applies to the register, the OfS will make an assessment on whether a provider's management information systems are capable of providing reliable and timely information and data to the OfS and the DDB on an ongoing basis. If a provider is unable to provide information and data to the required standards of reliability and to the required timescales, either at registration or for ongoing monitoring purposes, then the OfS may require additional assurance in the form of specific conditions of registration, enhanced risk monitoring, and ultimately may use its suite of sanctions.
273. For example, a provider found to have robust management information systems, as set out above, might expect no additional requirements from the regulator beyond its data submission (apart from in the event it is subject to random sampling). However, all providers' data must continue to be reliable and be provided in a

consistently timely fashion – if not, the OfS will consider this an indicator of increased risk and will act accordingly to engage with individual providers.

274. The responsibility however for maintaining and providing reliable data to the DDB, in accordance with registration condition J2, clearly sits with the provider. The OfS will not manage or dictate how this internal process should work at an individual provider level. The OfS will approach provider data issues in line with its regulatory ethos – where it can work with a provider in a collaborative way to resolve issues, it will do so, but where regulatory action is required, it will act decisively.

275. In evaluating what the appropriate response to a provider's data issues are, OfS will also consider:

- a. the ongoing capability and capacity of a provider's internal data systems
- b. what it has already done (or attempted to do) to remedy retrospective data issues
- c. what the potential or actual impact at a provider and sector level is, and;
- d. whether a provider has acted ethically in maintaining its internal data systems and providing its returns to the designated data body

276. In considering what **appropriate information should be collected and made available to UKRI, the OfS, or the Secretary of State** (s64 of HERA), the DDB (or OfS if no DDB is appointed) will in particular consider what would be helpful to the OfS, UKRI and the Secretary of State. The DDB, or the OfS, must also periodically consider the views of the UKRI, Secretary of State and any other bodies the OfS considers appropriate, about the information that should be made available.

277. In considering **what information is appropriate** for publication and the appropriate timings, form and manner, the DDB<sup>27</sup> will:

- a. consider what would be helpful to current/prospective students and providers (including international)
- b. consult with representative stakeholder groups from time to time (including providers, students and employers)

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<sup>27</sup> Or the OfS, if it does not notify the designated data body it is required to do so, or where no DDB is appointed.

- c. publish this information at least annually
- d. publish appropriate information in line with accessibility and open data standards

278. The OfS will also have a duty (under S.66) to regard the views of the DDB when making a decision about what is appropriate under S.64 & S.65. This section also requires the DDB to provide the OfS, UKRI and Secretary of State with appropriate information they require in order to perform their functions.

279. In carrying out its functions under both sections, the OfS and the DDB will have regard to the need to reduce the burden on providers relating to the collection of appropriate information.

### Data strategy

280. The OfS will develop a data strategy for publication and consideration in 2018. It will set out how it intends to fulfil its responsibilities in relation to data; the data requirements it will place on providers; how it will work with the DDB; and the mechanisms it will use to ensure it takes account of the data needs of other organisations, including the sector itself and its statutory customers (e.g. DfE, UKRI, Education and Skills Funding Agency, Home Office, Department of Health, and the National College for Teaching and Leadership). The strategy is expected to set out the way in which the new data landscape, developed to support the OfS and the new regulatory landscape will:

- a. **ensure simple and effective data collection:** the OfS, working with the DDB, must have the ability to collect the data needed to inform education policy, risk-based regulation and student choice and this reliable data must be provided in a format and at a time that supports those needs. The OfS is aware of the Data Futures project being led by HESA that will see more timely and robust collection of in-year data across the sector. It believes that this is the right direction for data collection and the aims of this project should apply to all providers with approved and approved (fee cap) status from 2019/20, with FE colleges supplying data directly to the nominated DDB via their own regulatory bodies
- b. **minimise the burden on providers:** ensures that the data collected is necessary and proportionate for the purpose of the OfS and the DDB fulfilling their statutory functions and supports the benefits of risk-based regulation. At the same time, the DDB will also seek to avoid placing undue financial burdens on providers in terms of meeting the operating

costs of the DDB (whose statutory activities will be paid for via provider subscriptions)

- c. **ensure student privacy is protected:** that at all times, in the supply and use of data, the OfS's obligations under the Data Protection Act are met
- d. **use common data standards across a diverse provider base:** supporting a single version of the truth and reducing the burden on data suppliers and users
- e. **ensure the way data is collected reflects the diversity of the sector:** where direct comparability and consistency between data from different providers is not necessary, such as around financial sustainability, OfS and the DDB will ask for data to be provided in a form convenient to individual providers and which largely reflect their own existing data needs to effectively run their institutions. This will ensure that the data collection and quality assurance undertaken by providers is both valuable for their internal management and governance processes, as well as for the OfS as a regulator
- f. **ensure published data commands public confidence:** the effective operation of the higher education sector is of national importance, while the decisions students make in relation to higher education are amongst the most important in their lives. It is therefore essential that the data the OfS, or the DDB, publishes can be relied upon to be independent and based upon best statistical practice. In order to provide this assurance it is expected that the OfS and the DDB will be listed as Official Statistics producers, bringing them under the guidelines and best practice laid down by the National Statistician
- g. **support the Open Data agenda:** making more data than ever before freely available to students, providers, the public and researchers to support external understanding of the system, delivery improvements and student choice.
- h. **support a smooth transition to the new data landscape:** while the OfS will require reliable and timely data from all providers to regulate effectively, not all providers (especially new providers) will start from the same base in terms of the reliability of their data and the maturity of their data infrastructure and governance. To facilitate a smooth transition, there may be a short transition period where some providers will be allowed to provide data in a bespoke format, as long as the reliability of the data is

not compromised – the requirement for reliability is the same for all providers. Data requirements will not necessarily be a barrier to entry for new entrants, and bespoke requirements for their data returns may be determined once they have successfully registered (though the OfS will not compromise on standards of reliability and timeliness of data).

- i. **incentivise investment in our data capabilities:** ensuring the OfS is able to take advantage of the latest technologies and tools to continuously improve the data environment and which encourages innovation in the use of cutting-edge techniques to generate and share insight.
- j. **have structures and governance that support the achievement of these aims:** ensuring clear accountability for the quality of data collection, analysis and publication.

## Part E: Interventions

281. This section covers proposals on when and how the OfS will intervene to address either a provider breaching, or an increased risk of a provider breaching, its ongoing conditions.

282. The OfS has a range of interventions at its disposal, from enhanced monitoring of providers or imposing specific ongoing registration conditions, through to imposing formal sanctions, including monetary penalties, suspension from the register and deregistration. The OfS may also use interventions which are specific to access and participation plans (refusal to agree a new access and participation plan) and Degree Awarding Powers and University Title (variation and revocation of Degree Awarding Powers and revocation of University Title).

283. The OfS will usually intervene when there is a breach of an ongoing registration condition, or when a breach appears likely. The OfS will establish whether this is the case through monitoring; the information might come from the OfS's own analysis, other sources, or, crucially, the provider itself.

284. The OfS will expect to have an **open and honest dialogue with providers, as a cornerstone of its approach to managing and mitigating risk**. It will expect providers to be self-aware, to manage their own risks and to communicate (without passing responsibility for) these risks with the OfS, before they crystallize into issues. This expectation will be underpinned by the obligation on providers to comply with the ongoing registration condition to provide the information that the OfS requires (see condition J1). The OfS will, in return, work collaboratively with the provider to understand the individual circumstances to determine the most

appropriate and proportionate action(s) to take. **However, the OfS will not hesitate to use its powers of intervention to act where it deems it necessary to do so.**

285. The intent behind providers' behaviour will be an important factor in determining the OfS's response. Providers who deliberately or recklessly act, or fail to act, in breach of their ongoing conditions, who act dishonestly or seek to cover-up information, or who wait to engage with the OfS until the OfS's own processes highlight issues (i.e. breach of conditions, whistleblowing) will be treated with greater severity, and the OfS will be more likely to use one of its formal sanctions.

286. The OfS must consider its general duties under section 2 of HERA when intervening. In particular, the OfS will be required to take into account the need to use its resources in an efficient, effective and economic way and follow best regulatory practice by ensuring its actions are:

- a. **prioritised:** the OfS will focus on matters that pose a risk of harm, especially to the interests of students or taxpayers
- b. **proportionate:** the OfS should take all the relevant circumstances into account and take action, which is proportionate to the gravity of the risk or breach, the culpability of the provider and the impact on students
- c. **targeted:** the OfS should take action to address the risks that are posed by the provider
- d. **transparent:** the OfS should clearly set out the intervention process, the action it is taking and the reason why. For entry and search, specific ongoing conditions and sanctions, this should be as described in the provisions in HERA (sections 6, 17 and 19 and schedules 3 and 5) and should include a provider's right to appeal. As proposed in the chapter on the publication of the register the OfS should also publish details of a provider's specific ongoing conditions, and monetary penalties on the OfS register, and, as set out in HERA s.16, a provider's suspension should also be listed. De-registered providers should be listed elsewhere on the OfS website
- e. **accountable:** the OfS should be accountable for the decisions it makes and explain to providers the reasons for taking these decisions

287. The OfS will provide support through the quality of its dialogue with providers, but will not fund support teams to assist/prop up failing institutions. The OfS will not usually look to deploy formal sanctions when providers flag problems (though this would depend on the particular circumstances); instead, the OfS would normally



direct them to other sources (such as sector bodies) for specific support and would support the provider, through dialogue, to consider where their issues lie.

### **Relationship between the risk assessment and the OfS's action**

288. Having identified and assessed the level of risk, the OfS will then use its assessment to consider whether any intervention is required and, if so, which is most appropriate. The OfS's response will be proportionate and relevant to the risk it seeks to mitigate, considering the level (through severity, impact, repetition) of risk involved and its context/category.

### **Intervention Factors**

289. The OfS will consider a set of factors before deciding whether to intervene, and if so, which form of intervention to use. Not all factors will be relevant in every circumstance, and the OfS will need to look at the applicable factors in the round when making its decision. The proposals below draw upon factors used by other regulators, such as Ofcom, Ofgem and FCA.<sup>28</sup>

290. The proposed factors are set out below:

- a. How serious the risk of breach or actual breach is: An intervention is more likely where the OfS considers the risk of breach is serious.
- b. The amount/level of harm caused or potentially caused (either from a single action or a number of actions): An intervention is more likely to be used where there is a high impact on the student interest (e.g. student study is disrupted, there are breaches to the student contract, a high number of students are impacted) the taxpayer (costs have increased impacting on value for money), or reputational damage to the sector as a whole (and considering fairness to providers that did comply).
- c. The nature of the risk or breach and whether a particular intervention would be effective in addressing the risk or breach.
- d. How the OfS became aware of the action or outcome or breach: An intervention is more likely to be used where the provider has not notified

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<sup>28</sup> Ofcom's enforcement guidelines: [www.ofcom.org.uk/data/assets/pdf\\_file/0015/102516/Enforcement-guidelines-for-regulatory-investigations.pdf](http://www.ofcom.org.uk/data/assets/pdf_file/0015/102516/Enforcement-guidelines-for-regulatory-investigations.pdf)

Ofgem's Enforcement Guidelines:

[www.ofgem.gov.uk/system/files/docs/2016/12/enforcement\\_guidelines.pdf](http://www.ofgem.gov.uk/system/files/docs/2016/12/enforcement_guidelines.pdf)

FCA's Enforcement Principles: [www.handbook.fca.org.uk/handbook/PRIN/2/1.html](http://www.handbook.fca.org.uk/handbook/PRIN/2/1.html)

the OfS and the OfS has become aware from other sources such as through its own regulatory activity, whistleblowing, or media reporting.

- e. How long the action/outcome has been occurring and the extent to which it occurred deliberately or recklessly or there is dishonesty involved: An intervention is more likely to be used where a provider has been deliberate or reckless in its non-compliance or where it has been concealed for a long time.
- f. Steps taken by the provider to prevent or remedy the action/outcome: An intervention is more likely to be used where a provider has not provided sufficient evidence that they have tried to prevent or remedy the breach or action/outcome that resulted from the risk.
- g. The likelihood it could happen again, including the provider's history of regulatory compliance: An intervention is more likely to be used where a provider has a history of non-compliance or the OfS has concerns that a breach could happen again.
- h. The extent to which the provider cooperates with the OfS's investigations and enquiries: An intervention is more likely to be used where a provider does not cooperate with the OfS.
- i. Any gain (financial or otherwise) made by the provider as a result of the action/outcome: An intervention is more likely to be used where a provider has gained from non-compliance.
- j. The action that the regulator has taken in previous similar cases: An intervention is more likely to be used where the OfS has intervened in a previous similar case.
- k. Any action taken by another regulator to remedy the action/outcome: An intervention is more likely to be used where an action/outcome is not being remedied by another regulator's actions.
- l. The extent to which any action/outcome has created a lack of confidence in the market: An intervention is more likely to be used for the providers involved where action taken by a group of providers has undermined confidence in the higher education market and therefore impacted on providers that have complied.

291. The OfS will need to take a risk-based and proportionate approach when considering these factors to ensure that the appropriate intervention action is taken. The nature of the risk will also inform the action taken:

- a. where the risk of breach has limited impact on students, can be resolved relatively easily and is not a serious risk the OfS may decide to have some increased dialogue with the provider rather than using more formal intervention.
- b. where the risk of breach is serious and could result in having a high impact on students the OfS should intervene and take more serious action, such as imposing a specific ongoing condition to reduce the risk and impact.

292. These factors may be included in the regulations (made by the Secretary of State rather than the OfS) on the matters which the OfS must (or must not) consider when imposing a monetary penalty (HERA section 15(3)). These regulations on the maximum amount of the monetary penalty the OfS can impose will be consulted on in a separate DfE consultation before the end of the year.

### **Different types of intervention**

293. The OfS has a suite of interventions (including sanctions) available to it, described below. Alongside these interventions, there are other tools that the OfS will use in the course of its business to encourage compliance, but which are not considered direct “interventions” for individual providers. For example, the OfS will publish any information that it deems relevant for students to be aware of (such as grade inflation statistics).

### **Enhanced monitoring and/or investigation**

- a. If a risk of breach has been identified, OfS will need to take targeted actions to establish the facts and reach a judgement as to whether there is, or is likely to be, non-compliance with the ongoing registration conditions or other regulatory breach. Relying on general ongoing condition J1 (see the Guidance), the OfS:
- b. may require a provider to give it additional information, including data, to enable it to fulfil its regulatory duties, including assessment of compliance against the general ongoing registration conditions. The OfS will notify the provider’s governing body in writing of the additional information required, the reasons for this requirement and what the data and/or information will be used for.

- c. will allow a reasonable timescale for submission of this data/information; the timescale will be set following consultation with the provider where appropriate, and will be informed by whether the provider has the data/information to hand or needs to collect or prepare it before supplying it to OfS.
- d. may also investigate specific concerns, which may comprise (but not be limited to):
  - i. Investigation using data audit or other appropriate methods
  - ii. Requiring information to be re-audited by a specified auditor, where the OfS has reasonable concern that the audit opinion does not provide the necessary assurance.

294. Requiring the provider to take particular co-operative action and the deadline for response from the provider – these actions may include access to, information (including data), records or people, to enable the OfS to investigate any concerns effectively and efficiently. The OfS will aim to notify the provider of the outcome of the investigation and/or consideration of the provider’s response within 14 working days of the conclusion of the investigation unless there are particular circumstances which mean that this is not possible.

### **Powers of entry and search**

295. The OfS may, in some circumstances, use its powers of entry and search as set out in section 61 and Schedule 5 of HERA 2017 to investigate suspected serious breaches of a provider's OfS ongoing registration conditions, its OfS funding or student support funding conditions, such as financial irregularity. In order to exercise this power, the OfS must seek and obtain a magistrate’s warrant. As set out in Schedule 5, a magistrate would need to be satisfied that four tests were met before granting a warrant, as follows:

- a. that OfS has reasonable grounds for suspecting that there is, or has been, a breach of a registration condition or funding condition of the provider
- b. that the suspected breach is sufficiently serious to justify entering the premises
- c. that entry to the premises is necessary to determine whether the suspected breach is taking place or has taken place, and;
- d. that entry to the premises has been, or it is likely to be, refused or requesting entry may frustrate or seriously prejudice the purpose of entry.

296. It is envisaged that the OfS would exercise these powers rarely and only in exceptional circumstances; it would look to use them only in cases where it appears to the OfS that its usual investigation methods would not be effective, for example, where there is reason to believe that relevant information would be destroyed or interfered with if requested in the usual way or the provider has not complied with prior requests for information or cooperation.

### **Specific ongoing conditions**

297. The OfS may choose to impose a specific ongoing condition where the OfS has identified that a provider presents a specific risk that is not addressed by a general ongoing condition. The OfS may also choose to impose a specific ongoing condition to address a risk that a provider may breach an ongoing registration condition or to stop a breach from occurring. The specific ongoing condition will be targeted to mitigate the specific risk that is posed and should be focused on actions or activities by the provider, which the OfS may require to ensure it meets its ongoing conditions. Therefore, the OfS could impose a variety of specific ongoing conditions. Some examples of the different types are set out below:

- a. specific ongoing conditions to notify the OfS before a provider takes an activity/ takes action: for example, where a provider has had financial sustainability issues, which has resulted in a dip in their profits and surplus a specific ongoing condition could be imposed that the provider must inform the OfS before it makes large investments
- b. specific ongoing conditions to specify action to be taken before the provider can undertake an activity/ takes action: for example, where there have been poor employability rates of students at a provider as a result of poor resourcing of teaching staff a specific ongoing condition could be imposed imposed such that the provider must improve its employment outcomes before it can increase the number of students it recruits
- c. specific ongoing conditions to limit a provider's activity: e.g. where forecast student number growth may have a significant negative impact on quality and the student experience, due to the overstretching of a provider's finances and resources (or where student growth risks breaching this condition), a specific ongoing condition might be imposed that the provider must have a student number control

### **Sanctions**

298. The OfS will not hesitate to use the full range of interventions available to it where appropriate. As set out in HERA, the OfS may apply a monetary penalty to,

suspend, or de-register a registered higher education provider where it appears that there is or has been a breach of a provider's ongoing registration conditions.

### **Monetary penalties**

299. The OfS is empowered by HERA to impose a monetary penalty instead of, or in addition to, other sanctions. This sanction may be appropriate in cases where, for example, a provider has deliberately or negligently breached its ongoing conditions, has been dishonest and concealed information, or has had repeated breaches. The use of monetary penalties may help the OfS preserve the effectiveness and viability of the regulatory regime; in the first instance, the OfS will seek to build a trust-based regime based on full compliance with the information conditions, but will not hesitate to impose monetary penalties if providers do not play their part. If a provider has benefitted financially from failing to comply with its ongoing conditions (for example by failing to ensure necessary resourcing) a monetary penalty may also be appropriate. The OfS would take into account the likely impacts of any monetary penalty, especially on students at the provider.

300. The Secretary of State will set out in regulations the matters the OfS must/must not have regard to when imposing a monetary penalty and the penalty amount. The amount of the monetary penalty the OfS can impose and the factors the OfS should consider when determining the amount will be consulted on in a separate DfE consultation before the end of the year.

### **Suspension of registration**

301. The OfS may decide to suspend a provider's registration (or suspend some of its provision or activities) in the event of a breached condition to immediately reduce the impact on students or taxpayers. During the suspension, the provider will be expected to take remedial action (secured through imposition of specific conditions), with the OfS lifting the suspension once satisfied that the breach has been rectified. An example of where suspension might be appropriate is where on a particular course a provider's students are not progressing enough and are at risk of not progressing to professional jobs or postgraduate study. Upon investigation by the OfS it is apparent that changes need to be made to the course design. The provider has breached one of their ongoing conditions, however they will be able to remedy the breach. To prevent more students from being impacted and to ensure the provider takes action to remedy the breach the OfS may decide to suspend the provider's recruitment of new students to a particular course until remedial action is taken.

## De-registration

302. HERA sets out the circumstances in which the OfS has the power to de-register a provider. One of the following two conditions must be met:

- a. The first is met where the OfS has previously imposed a monetary penalty or suspended the provider in relation to a breach of one of its ongoing registration conditions and it appears to the OfS that there is again a breach or a continuing breach of that condition or there is or has been a breach of a different condition
- b. The second is met where it appears to the OfS that there is or has been a breach of one of the provider's ongoing registration conditions and that a monetary penalty or suspension is insufficient to deal with the breach.

303. The OfS may decide to move straight to de-registering a provider where the risk to the student or taxpayer is so serious that using another sanction would not be sufficient. Before deciding to de-register a provider the OfS should consider the impact of the deregistration on the students. An example of when deregistration might be appropriate would be where a whistle-blower lets the OfS know a provider has been supplying inaccurate information to the OfS deliberately to conceal poor student outcomes. After investigation by the OfS it finds this to be true, and that as well as the provider breaching one of its ongoing conditions for quality there are also concerns about the provider meeting the terms of its access and participation plan. The OfS may decide to de-register the provider as there is a significant risk to students as the provider's leadership team has not been acting in their interest, has been dishonest and has acted fraudulently. The behaviour of the provider raises concerns that they could breach further conditions and could try to conceal it.

304. A provider must also be removed from the register where the OfS becomes aware that the provider no longer is, or intends to become, an English higher education provider.

305. In addition, a provider may request to be removed from the register on a voluntary basis, as set out in section 22 of HERA. This could happen, for instance, where a provider chooses to exit the market, or no longer wishes to access the benefits of being a registered higher education provider. In such cases, the governing body of the provider must formally apply to the OfS, setting out why it wishes to be de-registered and when it would like the deregistration to come into effect. The OfS would normally de-register the provider on the date requested, unless such a date gives insufficient time to de-register the provider in an orderly fashion and with little impact on students. If the OfS was minded to alter the date of

deregistration from that requested, the OfS would usually engage with the provider early on. In line with section 22, the OfS must then remove the provider, but is obliged to keep a list of providers removed from the register in this way. This will be part of other, historic information the OfS will make available, as described in chapter 7.

306. If a provider is de-registered, or suspended from the register to the extent that students cannot complete their courses, the provider's student protection plan would be triggered.<sup>29</sup>

### **Refusal to approve an access and participation plan**

307. With regard to access and participation plans, and in addition to the use of other interventions, including sanctions, as appropriate, section 21 of HERA sets out a power of the OfS in circumstances where a registered higher education provider is required as a registration condition to have an access and participation plan and fails, in the view of the OfS, to comply with an equality of opportunity provision of that plan or with its mandatory fee limit condition. (Section 12 of HERA provides that a provider should not be regarded as having breached an equality of opportunity provision of its plan if it can show that it has taken all reasonable steps to comply with it.)

308. The expectation is that that where the OfS has concerns in relation to access and participation plans it will consider the intervention factors as for other breaches or risks of breach, and will in exceptional circumstances consider use of the power to refuse to agree a new access and participation plan alongside its range of other sanctions.

309. In those circumstances the OfS can notify the provider that it will 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, and the procedure it should follow when giving notice of refusal and the effect that the notice has. These regulations must also provide for a review process before any decision to refuse becomes final.

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<sup>29</sup> Where this is a registration condition, i.e. for providers in the Approved categories



## **Sanctions and interventions for providers with Degree Awarding Powers and University Title**

310. In addition to the sanctions and interventions outlined above, HERA gives the OfS powers to vary or revoke Degree Awarding Powers, and revoke University Title. This is regardless of how these powers were obtained, and applies whether or not providers are registered. For more detail on Degree Awarding Powers and University Title, including how the OfS will use the powers of variation and revocation, please refer to the consultation: [Simplifying access to the market: Degree Awarding Powers & University Title](#).

### **Transitional or Saving Provision (including teach out)**

311. Should a provider be de-registered, the OfS may put in place transitional arrangements or a 'saving provision' to in particular protect the interests of students. This means that a provider may continue to be treated as a registered higher education provider following deregistration for purposes specified by the OfS for a transitional period. Such provision may allow a de-registered provider's existing students to continue to access student support, where the quality and standards of the provider's provision are adequate and it is in the student's interest to remain at the provider. This would only be where the provider is able to meet its continuing obligations to its students for the ordinary duration of (or until withdrawal from) their course (which is also referred to as teach out). Under these circumstances, the OfS will notify the governing body of its intent to allow the provider to continue to deliver courses to its current students for a specified period and that no new students are allowed to be enrolled. The OfS will also set out the conditions that will apply to the provider and the processes they will need to follow during this specified period.

## Case Studies

312. The case studies below illustrate how the OfS may take different intervention action dependent on the circumstances and the intervention factors as described earlier.

### Provider ABC

Provider ABC has been targeting its recruitment activities at particular types of students that represent an increased risk of higher dropout rates. It has flagged to the OfS that its non-continuation rates are still high even though action has been taken to try to reduce them.

The OfS asks Provider ABC to share its strategy and action plan for improving its non-continuation rates. Based on this evidence, the OfS believes that the provider presents a risk of breaching their ongoing registration condition B2 (the provider must support students, including through the admissions system, to successfully complete and benefit from a high quality academic experience).

After discussions with Provider ABC, OfS decides to impose **enhanced monitoring**, which includes a further conversation, the provider updating its action plan, and flagging any potential issues with the OfS.

As the provider improves, the OfS continues with enhanced monitoring until the provider's non-continuation rates improve to an acceptable level (taking account of their context). However, if at any point the provider stops improving and/or non-continuation rates worsen, the OfS will re-engage with the provider and take the appropriate action, which could include suspension.

## **Provider XYZ**

Like Provider ABC, Provider XYZ has been targeting its recruitment activities at particular types of students that represent an increased risk of higher dropout rates. It has flagged to the OfS that its non-continuation rates are still high even though action has been taken to try to reduce them. The OfS believes the provider is at risk of breaching condition B2

The OfS asks Provider XYZ to share its strategy and action plan for improving its non-continuation rates. The OfS has concerns about the provider's action plan as it lacks a clear strategy for addressing them. The OfS investigates further and finds that the provider's systems, including admission processes, are not sufficient to support students to complete. As a result of the above evidence the OfS decides that Provider XYZ has breached ongoing condition B2.

Due to the high number of students that are already affected, and that the provider still has some way to go to remedy the breach the OfS decides to impose a **suspension** on the recruitment of new students to ensure the risk does not increase.

***Question: Do you agree or disagree with the approach we propose the OfS takes on interventions (including sanctions) and do you agree or disagree with the proposed factors the OfS should take into account when considering whether to intervene and what intervention action to take?***

## **Part F: Protection of student interests**

313. The OfS will be a market regulator, and as such it should not have to be in the business of having to prop up failing institutions, and neither should Government. The possibility of exit is a crucial part of a healthy, competitive and well-functioning market, and such exits happen already – although not frequently – in the higher education sector.

314. However, the OfS' regulatory framework, and in particular the financial viability and sustainability condition and the OfS's early warning approach to monitoring, are designed to prevent sudden and unexpected closures. This does not mean departmental, campus or even institutional closures will never occur. Higher education providers are autonomous institutions, and as such are entitled to make their own decisions about any future business model or viability of any particular course or subject.

315. The OfS' interest is in ensuring that such changes and closures do not adversely affect students and their ability to conclude their studies and obtain a degree. Students are making a considerable investment when they commit to a programme of study, investing their time, energy and money. It is important that they should be able to complete those studies.
316. This is why it will be a registration condition for all providers in the Approved categories to have an agreed student protection plan in place (see condition F) – the core purpose of which will be ensuring continuity of study.
317. Student protection plans will set out what students can expect to happen in the event of course, campus or department closure, or if an institution exits the market. The plans must be approved by the OfS, and be easily available to current and prospective students.
318. The OfS will take a proportionate, risk-based, approach to student protection and will work with providers to ensure the protections and measures are practical, reasonable and manageable. The types of measures and precise content of each student protection plan will be determined by the particular risk profile of the provider. It will be expected to address the specific risks of that provider, in a robust but proportionate manner.
319. Providers with a low risk of unplanned closure would be required to have light-touch plan, including minimum measures such as provision to teach out students, or arrange transfers to other providers. More specific and tangible measures will be required where a provider is judged by the OfS to be at greater risk of market exit.
320. This approach allows the OfS to strike a balance between allowing the market to operate freely, and protecting students. By keeping additional burdens on providers to a minimum and ensuring there are no unnecessary barriers to entry to the higher education sector, the OfS approach will also support competition and student choice. Please refer to the Guidance for more detail and a student protection plan template.

## Chapter 6: The OfS's relationship with other regulators and bodies

### Part A: Collaborative working principles

322. Section 63 of HERA gives the OfS powers to cooperate and share information with other bodies, with section 112 giving the OfS distinct powers to cooperate and share information with UKRI, and section 113 empowers the OfS to work jointly with the devolved administrations and funding bodies and UKRI in relation to its functions. Furthermore, the OfS must provide information and advice regarding any of its functions to Government under section 78 as and when it is required.
323. The OfS will take these powers seriously, and the appointed staff have already made a constructive start to building the relationship with UKRI. The OfS may wish to use these powers under sections 63, 112 and 113 in a range of circumstances. Some examples are considered below.
324. **Fulfilling the OfS's role of stewardship:** Strong and effective relationships with other organisations will be essential to the OfS and its stewardship of the sector. The OfS will wish to draw on and share, consistently with its statutory powers and obligations, best regulatory thinking and practice, not only in determining the regulatory framework, but in the ongoing delivery of its regulatory functions. This may involve engagement with the Devolved administrations and their funding bodies (see Part C of this chapter for more details on arrangements with these bodies) and other regulators and funding bodies in England. The OfS may also use information from and the views of other regulators or funding bodies such as ESFA and NCTL to inform its decisions around initial registration and ongoing monitoring of providers, where this is consistent with HERA. This may include using regulatory decisions of these bodies. In addition, the OfS and the DDB will seek to minimise the data collection burden, by ensuring that the OfS is able to draw on data available from the DDB for its regulatory purposes.
325. **Working in the student interest:** Relationships with other organisations may be important to ensure that the OfS works in the student interest. For example, the relationship with the OIA will be important to ensure that complaints procedures are in place and that concerns raised by students (about, for instance, their student contracts) are considered and where appropriate addressed. Getting the right relationship between the CMA, the OIA and the OfS will also be important to ensure that in the area of consumer law, students understand and are able to exercise their rights.

326. **Ensuring high quality and standards:** The OfS will need to work with a range of bodies to ensure high quality and standards of providers. The relationship with the DQB – should one be designated – will be central to that body’s delivery of a robust system of quality assessment, with oversight by the OfS which acknowledges the designated body’s expertise and protects its impartiality. Further detail on the role of the DQB is in the Guidance.
327. Clarity of responsibilities will also be important where higher education is delivered in a further education setting or through apprenticeships where other bodies, such as Ofsted and Ofqual<sup>30</sup> also have responsibilities for quality. Good relationships with the Education and Skills Funding Agency (ESFA) and the Institute for Apprenticeships (IfA) will also be important in ensuring high-quality provision for students, including degree apprenticeships.

## Part B: Principles for engaging with other bodies

### Principles for engaging with other bodies

328. The OfS’s engagement with other bodies will be underpinned by the following principles, consistently with the general duties of the OfS, in particular the duty to have regard to the need to use resources in an efficient, effective and economic way and to have regard as far as relevant to the principles of best regulatory practice and also any statutory or other constraints on information sharing and collaboration.
329. **Cooperation** by supporting and reflecting each other’s duties and giving notice when there are changes to regulatory powers.
330. **Clarity** on roles and responsibilities and how they work together.
331. **Appropriate burden** by working intelligently, openly and accountably to ensure that duplication of regulatory requirements is avoided when possible and there is the minimum regulation needed to deliver required outcomes.
332. **Mutual understanding** of regulatory processes to enable confidence in and reliance on each other’s processes and oversight.
333. **Mutual assurance** when it is needed to ensure sighting on relevant emerging issues and risks.

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<sup>30</sup> [www.gov.uk/government/organisations/ofqual/about](http://www.gov.uk/government/organisations/ofqual/about)

334. **Information sharing** of relevant and accurate data in a timely manner, where legally permissible.

335. **Transparency** on how data and information will be used, with whom it will be shared, under what circumstances and for what purposes, as determined by the Data Protection Act and other applicable legislation (including HERA).

### **Providers primarily regulated or monitored by other bodies**

336. Where higher education providers are primarily regulated or monitored by another body, the OfS will work with them to ensure providers are not having to provide the same information to both bodies, but can just provide it to one, where this is appropriate. The OfS will avoid, wherever possible, duplicating assessments made by other regulators but may use this information to make decisions about whether the provider meets the OfS initial and ongoing registration conditions. Data and intelligence will also be shared to enable effective monitoring of providers. This applies to higher education provision by academies, Sixth Form Colleges, FE Colleges, employers and independent learning providers. This provision is overseen by the ESFA which works with providers, monitoring and intervening where there is a failure or where there is evidence of mismanagement of public funds.

337. Where these providers wish to participate in the higher education sector and wish to access public funding, a Tier 4 licence or to be a recognised higher education, the provider will need to register with the OfS. The registration categories will apply to them as to other providers, as set out in chapter 4. The OfS will seek to establish a collaboration agreement and/or data sharing agreement with the ESFA.

338. NCTL is responsible for the accreditation of initial teacher training, and regulates initial teacher training programmes that are delivered by higher education providers including SCITTs. SCITTs will not be required to register with the OfS to enable their trainees to access student support. Instead SCITTs will continue to be regulated by NCTL, and continue to comply with NCTL's ITT criteria on the charging of fees. However, SCITTs and other ITT providers, which also offer other higher education courses will be expected to register with the OfS if they want to receive any of the benefits as set out in chapter 4 part E. We anticipate the OfS will need to have a collaboration agreement with NCTL for the sharing of data and intelligence to enable effective monitoring of providers that register with the OfS and receive funding and the allocation of ITT places from NCTL.

## Other bodies drawing on assurances from the OfS

### *UKRI*

339. Joint working between the OfS and UKRI is vital to ensure a co-ordinated and strategic approach to funding and regulation of the higher education system in England. Section 112 gives the OfS distinct powers to co-operate and share information with UKRI and Section 113 also provides for some joint working between UKRI and the OfS. This will be essential across a range of areas of shared interest, for example around: skills, capability and progression; knowledge exchange; infrastructure funding; building robust evidence and intelligence; and ensuring that the REF and TEF are mutually reinforcing. UKRI will not only rely on the OfS's regulation of English higher education providers receiving research funding from Research England, but the whole of UKRI will be dependent on the judgements and decisions that the OfS will make as a regulator of providers in England. In addition, the OfS is likely to wish to be aware of concerns UKRI identifies in relation to research funding or research ethics and/or where there are significant changes in this funding which could increase the risk of a provider breaching its registration conditions (for example, where this has an impact on financial sustainability).

### *Privy Council*

340. Providers with Royal Charters or Private Acts may still be subject to Privy Council oversight of their governance arrangements, where this is set out in their charters or acts. As such, in addition to complying with the registration conditions in relation to governance, these providers may still need to obtain Privy Council approval for any changes to their governing documents. The OfS may therefore share its assessment of a provider's compliance with the governance condition with the Privy Council, to inform their views.

### *Home Office*

341. The proposals for Tier 4 licence eligibility are set out in more detail in chapter 4, Part E. More broadly, the DfE and the Home Office are engaging regularly to ensure that the new register and the Tier 4 visa system work together effectively.



## Other bodies with a relationship with the OfS

### *Competition and Market Authority (CMA) and Office of the Independent Adjudicator (OIA)*

342. The OfS will, where appropriate, work with the CMA to seek their views on the activity the OfS is undertaking to drive competition. It will also work closely on the issue of student contracts (see condition E4 in the Guidance).
343. OfS will host a regular consumer benefit forum with relevant representatives including CMA and the Office of the Independent Adjudicator (OIA). The forum will look to aid future collaborative working, by exchanging information, where appropriate, on new and developing practices in the sector, which will contribute to the respective work of the relevant bodies. The forum will also act as a sounding board for developing future policy designed to embed the OfS in its role as a fully effective market regulator.
344. The OfS will also work in collaboration with the OIA to ensure compliance with the registration condition G, which requires all registered providers to cooperate with the requirements of the OIA's student complaints scheme. Through regulations, where necessary, the OfS will notify the OIA of providers who successfully register in the Registered Basic category including the list of courses confirmed to be at higher education level during the registration process. The OfS will seek to establish a collaboration agreement and/or data sharing agreement with the OIA, as appropriate.

### *Student Loans Company*

345. Regulations to be made under section 63 of HERA will enable the OfS to provide information to and cooperate with the Student Loan Company (SLC) so that the SLC can determine which providers are registered and able to access the student support system and the fees that a provider can charge. This in turn has a direct bearing on the SLC's course management system, assessment system and student's eligibility and entitlement. The OfS will therefore need to work closely with the SLC to ensure that there is a smooth transition of any processes and interactions which are currently managed by DfE, HEFCE and OFFA.
346. The provision of information will always be subject to the safeguards in the Data Protection Act 1998, which may include providing anonymised data where necessary.
347. In addition to OfS sharing information, where a provider fails to comply with obligations to supply information to the SLC in relation to student support, this will be

an indication that the provider is not compliant with the Management and Governance general ongoing condition.

#### *Department of Health/Health Education England*

348. The funding for the number of places available to study medicine and dentistry in Approved (fee cap) providers is managed by the Department of Health and Health Education England, and controlled by the OfS through annual intake targets, which are subject to review as determined by the Department of Health and Health Education England to ensure that the future needs of the NHS workforce are met.

349. The OfS will work with the DfE on the allocation of grant funding to Approved (fee cap) providers, based on the number of medical and dental students in each provider.

***Question: Do you agree or disagree with the principles proposed for how the OfS will engage with other bodies?***

### **Part C: Providers not incorporated or based in England**

350. Only providers that meet the definition of an English higher education provider (see Part C) can register with the OfS. Whilst this is not dissimilar to the definition of those providers that can be regulated by HEFCE at present, it does create a need to clarify the status of providers that are either not incorporated in England, or are not based in England but are able to access the English student support system.

#### **Providers not incorporated in England seeking registration**

351. It may be possible for a provider to meet the requirement of being an English higher education provider without being a legal entity that is incorporated in England or the United Kingdom, for instance where an overseas incorporated provider carries on the majority of its activities in England. As long as the provider can comply with the registration conditions, being incorporated overseas does not prevent registration.

352. Any activities in England will be subject to the relevant applicable law as it applies in England, for example tax and equalities legislation, or HERA. Where appropriate, the OfS may impose a specific registration condition to ensure that a provider will submit to the exclusive jurisdiction of the courts of England and Wales in proceedings relating to its English higher education provision (including where this is provided by a sub-contractor).

353. There may also be particular regulatory risks associated with providers that are not, and/or are not part of, a UK incorporated legal entity, which the OfS would take into account when assessing whether or not registration conditions are met.

354. In doing so, the OfS will consider principles such as:

- a. Whether it has sufficient visibility of the provider's set up, corporate, control and ownership structures. This will in particular be relevant when assessing compliance with the registration conditions that relate to management and governance (and financial sustainability, where a provider's corporate arrangements impact on financial data and information).
- b. Whether the feasibility of the provider's student protection plan is affected, for instance where funds are held overseas.

355. The OfS will be able to use specific ongoing registration conditions to address any such risks, for instance to require sufficient financial resources to be held in the United Kingdom.

### **English Providers with activities overseas**

356. Many providers that are based in England and meet the definition of an English higher education provider will also carry on some activity overseas, e.g. by operating an overseas campus where they award their own, English degrees. This is often referred to as transnational education.

357. As set out in chapter 3 (Categories of the register), the provider that awards the degrees is ultimately responsible for the standards of those degrees. This is regardless of whether the degrees are awarded at the main English campus(es), at an overseas campus, or through a franchising or other arrangement anywhere in the world.

358. The OfS can only regulate the activities of registered providers, and so will only regulate overseas activity where this is part of the registered provider's activities, e.g. expenditure incurred at an overseas campus. It would not, for instance, regulate an overseas provider delivering a franchise, or a separate institution that sits within the same group structure as the registered provider. However, the OfS would take into account any income or costs the registered provider incurs in relation to any such unregulated entities for the purposes of the financial viability and sustainability condition.

## **Providers not based in England, but currently designated for student support for students ordinarily resident in England**

359. Students ordinarily resident in England are eligible to claim student support when attending higher education courses delivered by providers in Scotland, Wales and Northern Ireland. This requires designation of the courses by the Secretary of State for Education under existing powers in the Teaching and Higher Education Act 1998 (THEA).
360. Under the current arrangements, where providers in Scotland and Northern Ireland are authority funded i.e. in receipt of funding from the relevant regulator and subject to the associated assurance and compliance regimes, their courses receive automatic designation by way of regulations made under THEA. This is operated on a reciprocal basis; it is expected that this will continue once the OfS's regulatory framework is in operation in 2019/20.
361. Under the current system, for students ordinarily resident in England to receive student support at courses delivered by non-authority funded providers in Scotland, Wales and Northern Ireland (i.e. Alternative Providers), the provider in question has to apply for specific course designation from the Secretary of State for Education. These powers will remain in force and enable the designation of such courses.
362. The Government will therefore work alongside Scotland, Wales and Northern Ireland to ensure that, for providers in those countries who want students who are ordinarily resident in England to have access to student support, there is in place an efficient designation process which does not impinge on the devolved powers of each administration.

***Question: Do you agree or disagree with the proposed approach the OfS will take to regulating providers not solely based in England?***

## PART IV – The OfS as an institution

363. This Part sets out the additional regulatory activities the OfS will carry out.

### Chapter 7 – Publication of the register

#### Content of the OfS register

364. The following chapter proposes the information OfS will publish on its register. Some of the proposed content reflects HEFCE’s existing approach. However, the OfS register will also need to contain new information that relates to OfS’s new regulatory functions, such as the ongoing general and specific registration conditions for a provider and any enforcement action taken by OfS.

365. The purpose of the register is to represent a single, authoritative reference for students, businesses, providers or any member of the public to see a provider’s regulatory status and any information that should be publically available. It is a transparency tool, rather than an instrument designed to influence student decision making; the OfS, as set out in chapter 2, will have other levers and data sets that it will encourage students to use (such as the TEF or LEO data). However, it is still important for this more technical regulatory information to be presented clearly in a single, easily accessible place.

#### Register content to be set out in regulations

366. The Secretary of State for Education will lay regulations that make provision for the information which must be contained in a provider’s entry in the register. The OfS will publish this information, and may also decide that the register should contain additional information. Regulations will be made under section 3(6) of HERA to require the following information to be contained in the register and we are therefore not consulting on the requirements in the Regulations:

**Name**

The legal name and trading names of the registered higher education provider and any names a provider has been granted by royal charter.

**Contact details**

The contact/correspondence address of the governing body of the provider, the primary place of business of the provider, an email address and telephone number.

**Website**

The address of the primary website maintained by or on behalf of the provider. A link between the register and the provider's website will enable users to check that they are looking at the correct provider and to get further details of a provider's activities.

**Category of registration**

The category in which a provider is registered. This is essential for understanding the level of regulatory assurance OfS has in relation to a provider, the expectations of the provider including the conditions placed on it, and the provider's eligibility for student support and grant funding.

**Authorisation to grant degrees**

Degree Awarding Powers are currently granted at foundation, taught and research level. Further information on the different types and levels of Degree Awarding Powers available in future are set out in the separate consultation document [Simplifying access to the market: Degree Awarding Powers and University Title](#)

The Secretary of State currently has powers in England to designate awards so that they are not within the offence under section 214 of the Education Reform Act 1988 of offering etc. unrecognised degrees. This power will be exercised by the OfS when section 53 of HERA is brought into force. HERA also amends the 1988 Act so that awards made under Degree Awarding Powers granted by the OfS are not considered an offence.

The OfS will publish whether the provider has Degree Awarding Powers and what type of Degree Awarding Powers it has. This is consistent with the HEFCE register.

In addition, the register will include information relating to validation agreements, which is where a provider without degree awarding powers is validated by another provider with Degree Awarding Powers. This information would be in both the validated provider's and the validator provider's register entries.

**University Title**

There is a set process and criteria for providers to go through to be able to use "university" or "university college" in their title. The HEFCE register currently

publishes whether a provider is authorised to use either of these in their title, and the OfS will continue to do so.

### **Access and participation**

Whether a provider has an access and participation plan. Where a provider has an Access plan, HEFCE currently publishes a link from the register to the plan's location on the OFFA website. Providers with an access and participation plan should make them easily accessible to students and prospective students on their own websites. The register will include a link to the plan on each provider's website rather than recreating and duplicating this information in the register itself.

### **Fee limit**

Under section 11 of HERA the OfS must publish annually a list of registered providers who have a fee limit condition and the level of that limit. The HEFCE register shows where a provider has a fee limit and signposts users to their Access agreement. The register will link to the published list within a provider's register entry, rather than recreating and duplicating this information.

## **Proposed register content at the OfS's discretion**

367. As well as information required by HERA to be included on the register, the OfS may determine that there is additional information that should be included on the register. The OfS will require the following additional information to be contained in or provided with the register.

### *General registration conditions*

368. Each individual register entry contains the ongoing registration conditions which apply to the provider. Where a provider has not complied with a registration condition or conditions and a sanction has been imposed, this will be noted on the register. So that users of the register can understand what the conditions mean, a link to explanatory text for each condition will be included. General ongoing registration conditions can also be dis-applied under section 5(6) of the Higher Education and Research Act 2017. Therefore, the register will also state on a provider's individual entry if any general ongoing conditions have been dis-applied.

### *Student support*

369. Students may be able to access student financial support by way of grant or loan under section 22 of the Teaching and Higher Education Act 1998. The OfS can determine that access to the student support system should operate on a course by

course basis for a provider or it can allow all eligible courses offered by a provider to have access to the system. Where the OfS approves access on a course by course basis, the register will not list the provider's courses (apart from in exceptional circumstances), as there is provider level regulation for the majority of providers (although a provider may choose to not exercise access to the student support system for some of its courses). This is consistent with the OfS's risk-based approach to publishing information as it would only be where there is an exceptional need to know which courses provide access to the student support system that further detail would be published.

### *Specific ongoing registration conditions*

370. The OfS can impose and enforce specific ongoing registration conditions, as set out in chapter 5. For the sake of transparency, the OfS will publish on a provider's register entry the specific ongoing registration conditions applicable to that provider and the reason for imposing them.

### *Sanctions*

371. The following information will be published (after the provider has completed any appeals process) about the different sanctions, to make it clear to users of the register where there are potential risks at a provider. This information will remain available until the sanction is withdrawn.

- a. **Monetary Penalties** – including the amount of the penalty and the reason for it, after a final decision has been made and any appeal process has concluded.
- b. **Suspension** – There are statutory requirements for the OfS register to contain details of the fact that a provider is suspended during the suspension, the limits of that suspension, as well as the end date. The reason for the suspension will also be included for consistency with the other sanctions.
- c. **De-registration** – There are statutory requirements for the OfS to keep a list of de-registered providers and to publish this, together with any transitional and savings provisions. These provisions include teach out. This publication does not have to be on the register. In most cases the deregistration and reason for it will be published in the OfS's historic records, after a final decision has been made and any appeal process has concluded. However, where there is a provider which is treated as registered for teach out the deregistration and reason for it should be



published on the register for the duration of the teach out for consistency with the other sanctions.

#### *Variation of authorisation to grant awards and degrees*

372. The OfS has powers to vary a provider's authorisation to grant taught awards and research awards. This enables the OfS to vary the type, scope, and time-limit (if any) of Degree Awarding Powers. This power might be used positively, for instance to make time-limited Degree Awarding Powers indefinite. The variation powers may also be used as a regulatory intervention where the OfS considers it appropriate. As variation of authorisation constitutes action taken by the OfS, the OfS will publish on the register when it has varied the provider's authorisation to grant degrees and the reason for it.

#### *Revocation of authorisation to grant degrees and use of university in a provider's name*

373. The OfS can revoke a Degree Awarding Power and University Title or University College Title and will publish a reason wherever it does so. Where a provider remains registered after revocation of such a title the OfS will publish when and why revocation took place. Where a provider becomes de-registered, it will no longer appear on the register; this information will be recorded in the OfS's historic records elsewhere on its website to demonstrate that students who studied there previously were at a provider with University Title or University College Title, or Degree Awarding Powers.

#### *Tier 4 sponsor licence link*

374. Where providers want to register students from outside the European Economic Area they must apply for a Tier 4 sponsor licence from the Home Office. The HEFCE register links to the Home Office's Register of licensed sponsors, and the OfS will continue to do so.

#### *Quality and standards*

375. The OfS may ask the DQB to undertake a quality and standards assessment for an individual provider where intelligence gathered through ongoing monitoring highlights the need for such an assessment. The outcomes from these assessments will be published to provide transparency about the areas in which a provider may need to improve or where the quality and standards are of a high quality.

### *Teaching Excellence and Student Outcomes Framework (TEF)*

376. TEF recognises and rewards excellence in teaching and learning, and helps inform prospective students' choices for higher education. The HEFCE register currently publishes a provider's TEF rating, and the OfS will continue to do so. The OfS will also include whether a provider has met the eligibility criteria to take part in TEF.

### *Access and participation statement*

377. Providers with an access and participation statement should make them easily accessible to students and prospective students on their own websites. The register will state whether a provider has an access and participation statement and, where one exists, include a link to the statement on each provider's website, rather than duplicating this information in the register itself.

### *Other regulators/funding bodies*

378. Some providers are primarily regulated or monitored by another regulator or funding body, for example further education and sixth form colleges by the ESFA. The register will include a link to the primary regulator or funding body for a provider where this is not the OfS. It will then set out which of the provider's conditions are being met through evidence from the primary regulator. There are also providers which have exempt charity status. As these will be principally regulated by the OfS, the register will state in their register entry that this is the case. This is the approach currently used in the HEFCE register.

### *Initial Teacher Training*

379. Providers can deliver Initial Teacher Training if they are accredited by the National College of Teaching and Learning. Such accreditation means that the provider is eligible for student support for relevant courses. Where these providers register with the OfS, their register entry will contain this information. The HEFCE register currently publishes this information and the OfS will continue to do so.

### *A link to student choice information*

380. Although the register is not intended to be the primary place for students to find information about higher education providers and courses, the OfS will link to the Unistats website - as HEFCE currently does - so that users of the register can find further information about a provider or its undergraduate courses.

### *Unique identifier*

381. The UK Register of Learning Providers assigns a unique UKPRN number to a provider to support the sharing of information about learning providers with Government departments, agencies, learners, and employers. This number helps to identify providers correctly and will be included on a provider's entry, as it currently is on the HEFCE register to enable the effective sharing of data.

### *Franchising*

382. A provider may franchise teaching of some or all of its course to another provider or an employer. The provider awarding the qualification is responsible for the students at the franchising provider. The register entry for the main 'lead' provider will therefore list which franchising 'delivery providers' it has students at and responsibility for. Unless the franchisee 'delivery provider' also delivers provision to its own students and therefore registers in its own right, or chooses to register, the OfS will not have a direct regulatory relationship with it, and hence the delivery partner will not have their own individual entry on the register.

### *Teach Out*

383. Where the OfS de-registers a provider, the OfS can may make a transitional or saving provision, which includes treating the provider as registered for a transitional period. This may be where the OfS allows a de-registered provider's existing students to continue to access student support because it is in the students' interest to do so until the course is completed. The register will state if a provider is teaching out students, as HEFCE currently does. There are some providers which are currently teaching out. As these providers will not be registered with the OfS, information about these providers will be added to the OfS's historic records.

***Question: Do you agree or disagree with what additional information is proposed that the OfS publishes on the OfS Register?***

## Chapter 8 – Validation

384. New providers looking to enter the market and teach courses that lead to a degree have two main options: either obtain their own Degree Awarding Powers, or work in partnership with another provider that has its own Degree Awarding Powers. Those partnership arrangements are commonly known as validation or franchising arrangements.
385. A validation relationship occurs when a degree awarding body assesses a course which is delivered by another provider and approves it on the basis that it is of an appropriate standard and quality to contribute, or lead, to one of the degree awarding body's awards. Students will normally have a direct contractual relationship with the provider that delivers the course rather than the institution, which has validated the award.
386. A franchising agreement is a sub-contractual relationship, which allows a degree awarding body to form an agreement with a provider to deliver all, or part, of a programme which is approved and owned by the degree awarding body. The franchising institution retains overall control of the programme's content, delivery, assessment and quality assurance arrangements.
387. At the moment, new providers looking to apply for Degree Awarding Powers in their own right are required to demonstrate a track record. In order to build up this track record, providers must usually rely on a provider with Degree Awarding Powers (referred to in this chapter as an incumbent) willing to validate their provision during those four years.
388. Whilst changes to the system of authorising Degree Awarding Powers following implementation of HERA will make it possible to obtain these powers without a track record<sup>31</sup>, validation arrangements will remain an important route to accessing the market for many providers.

### Current Validation Processes and Barriers

389. Validation agreements can be mutually beneficial for new providers and incumbents alike. They enable new providers to draw on the knowledge, skills and expertise of more well-established incumbents in the design and delivery of their awards, whilst building up their own track record of performance. Providers in well-

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<sup>31</sup> For more detail see [Simplifying access to the market: Degree Awarding Powers & University Title](#)

established partnerships generally feel well supported and maintain an appropriate level of input into programme design and syllabus development.

390. However, there are a number of difficulties that providers can experience in relation to finding a partner, and entering into and maintaining a successful validation arrangement. For example, the process of finding a suitable partner is often reported to be difficult, due to lack of transparency and information on what incumbents may be willing to validate and how they can be approached. In addition, validation agreements can be one-sided as the power in negotiating the terms of a validation agreement lies with the incumbent. This may lead to difficulties in finding a partner to validate less traditional provision, such as accelerated degrees. Any change of validating partner can also often be a lengthy and complex process, and represent a financial burden.<sup>32</sup>

391. All of these issues can restrict access to the market for providers looking to offer new and innovative provision, thus limiting student choice.

392. In order to address some of these issues, and as part of exercising its functions, the OfS will take steps to improve validation services, and address some of the barriers providers can face when seeking a validating partner.

### **Steps to improve validation services**

393. When exercising its functions, the OfS must have regard to its duties as set out in section 2 of HERA. This includes duties to have regard to the need to promote quality and greater choice and opportunities for students, and the need to encourage competition where this is in the interests of students and employers whilst also having regard to the benefits for students and employers resulting from collaboration between providers.

394. As part of this, the OfS will take concrete steps to improve validation services, and address some of the barriers providers can face when seeking a validating partner. The OfS will aim to address the lack of transparency and opportunity for providers to compare various offers. This could include actively encouraging incumbents to develop validation services, and setting out exemplar validation arrangements to help informed negotiation between validators and providers who

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<sup>32</sup> For further discussion of these issues see the forthcoming Government Social Research Report *Alternative providers of higher education: views of the validation and franchise process and innovation in the sector*, to be published October 2017.

seek validation. Any actions taken by the OfS to improve validation services may also be relevant to franchising agreements.

395. HERA also gives the OfS powers to enter into commissioning arrangements and to, act as a validator itself, if authorised to do so by the Secretary of State. As part of the OfS's efforts to improve validation services more generally as set out above, the OfS will make an immediate assessment as to whether it would itself need to act as validator (for example to cover more niche, specialist subject, areas and/or innovative delivery models), and to advise the Secretary of State accordingly.

396. As part of this, the OfS will take concrete steps to improve validation services, and address some of the barriers providers can face when seeking a validating partner. The OfS will aim to address the lack of transparency and opportunity for providers to compare various offers. This could include actively encouraging incumbents to develop validation services, and setting out exemplar validation arrangements to help informed negotiation between validators and providers who seek validation. Any actions taken by the OfS to improve validation services may also be relevant to franchising agreements.

397. HERA also gives the OfS powers to enter into commissioning arrangements and to, act as a validator itself, if authorised to do so by the Secretary of State. As part of the OfS's efforts to improve validation services more generally as set out above, it will make an immediate assessment as to whether it would itself need to act as validator (for example to cover more niche, specialist subject, areas and/or innovative delivery models), and advise the Secretary of State accordingly.

### **Commissioning arrangements – section 50 of HERA**

398. For the purposes of section 50 of HERA, "Validation arrangements" are arrangements between one registered higher education provider and another registered provider under which the first provider –

- a. grants a taught award to a person who is a student at the other provider or
- b. authorises the other provider to grant a taught award on behalf of the first provider.<sup>33</sup>

399. The OfS has been granted powers to enter into commissioning arrangements with registered providers requiring those providers to offer to enter into validation

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<sup>33</sup> See section 50(4) of HERA.

arrangements in respect of some or all of the taught awards they are authorised to grant. These commissioning arrangements can be subject to conditions. The powers are intended to be used when the sector is not responding adequately to market demand, and where the OfS has not been successful in encouraging providers to offer validation arrangements on a sufficient scale or quality, or in the areas that are required.

400. The OfS will determine if a commissioning approach is necessary by identifying gaps in good validation provision through the performance of its regulatory functions and/or following information that its DQB, DDB, stakeholders and/or providers may share with it.

401. The OfS cannot force providers to enter into commissioning arrangements, and it will only enter into commissioning arrangements with providers who have the knowledge, experience, and intellectual capital to award the relevant qualifications. These providers must have the necessary Degree Awarding Powers to award those qualifications. The OfS will manage its own governance arrangements to ensure that any potential conflict of interest is managed and supported in line with its obligation to have regard to the duties in section 2 of HERA (including the duties to promote choice and competition) when exercising its functions in relation to validation.

## **Validation by the OfS – section 51**

### *Regulations*

402. The Secretary of State has the ability to make regulations under section 51 of HERA that authorise the OfS to enter into validation agreements, defined in section 51(7)). These regulations can require the OfS to offer to do so with registered higher education providers generally or with providers specified in the regulations. This could cover validation of all, or certain, specified taught awards (the OfS cannot validate research awards). These regulations are subject to Parliamentary scrutiny. The Secretary of State may only exercise this power if he or she considers it necessary or expedient to do so, having taken OfS advice.

### *OfS activity*

403. If authorised by regulations made under section 51, the OfS will operate its validation service similarly to other validators, to the extent that this is consistent with any conditions in the regulations. Therefore, it is expected that the OfS would enter into contractual validation agreements with providers. Students will be taught by their provider, with the OfS having no involvement in the day to day teaching. However, as the OfS will act as the degree awarding body it will be responsible for the

academic standards of any awards granted in its name, and for the quality of the learning programme.

404. It will be for the OfS to decide how to set-up an internal structure to run its validation service that is suitably independent from its other functions to avoid any conflict of interest, and consistently with the regulations. This could take the form of a separate internal division. The OfS will draw on expertise from across its organisation, the DQB and the sector to ensure that their invaluable experience of good and bad practice in the system can inform the set-up and shape of its own validation service.

***Question: Do you have any comments on the proposed exercise of OfS functions in relation to validation, in particular in relation to ensuring that the validation service is underpinned by the necessary expertise and operates in a way that prevents or effectively mitigates conflicts of interest?***

#### **Awards made by the OfS**

405. Where the OfS has been authorised under section 51 of HERA, it will be the degree awarding body. However, we would expect students and alumni to primarily talk about having studied at a particular institution – i.e. the institution teaching the course – not having secured an award from the OfS.

406. Any degree certificate would reflect this – i.e. name the institution the student studied at – whilst also making reference to the fact that the degree was validated and thus awarded by the OfS.



## Chapter 9 – Transition arrangements

407. The following section outlines the proposed approach to how the OfS will register and regulate providers in the transition period from 1 April 2018 to 31 July 2019. This chapter describes how the initial registration process will operate for current providers from April to September 2018 to ensure that students applying to study from the beginning of the 2019/20 academic year may access adequate information from the OfS register as they choose a course and a provider. It also explains how the ongoing registration conditions will apply to registered providers and be enforced during the 2018/19 academic year. The processes and criteria for registration for subsequent years are described in chapters 4-6. A final plan for the transition period will be published before April 2018.

### Who will need to register

408. All English higher education providers that wish to access student loan support from 2019/20 onwards will need to register with the OfS in either the Approved or Approved (fee cap) category of the register, and all such providers which wish to access grant funding from the OfS will need to register in the Approved (fee cap) category. This is regardless of whether or not providers are accessing such funding in 2018/19.

409. All English higher education providers that want to be eligible to apply for or maintain a Tier 4 licence from 2019/20 and/or Degree Awarding Powers and/or University Title, will also need to register as Approved or Approved fee cap regardless of whether they wish to access public funding.

410. Providers that want to be recognised as delivering higher education level qualifications but do not wish to gain further benefits (for example access to student loan funding or a Tier 4 licence) can apply to be in the Registered basic category of the OfS register.

411. Providers that deliver higher education through a franchising arrangement with a lead provider will not have to register with OfS. However, the lead provider will be responsible for ensuring that reliable accountability systems are in place to assure standards and the quality of provision and to ensure reliable data collection for any franchised provision (as described in chapter 3).

### Timings

412. The OfS's regulatory framework will come into full effect from 1 August 2019. The OfS only has powers to regulate English higher education providers (or those who

intend to become so) under the regulatory framework if they are registered. Therefore, the OfS will need to register providers before 1 August 2019.

### Proposed timetable

413. The following dates are indicative and may change once the OfS has been established, but are intended to provide an indication of the likely working timetable. See Table 7.

**Table 7 – transition timetable**

Date	Activity
January 2018	The OfS will be established
Mid February 2018	The OfS publishes access and participation plan guidance
February/ March 2018	The OfS publishes a statement on how it intends to exercise its functions and guidance on registration and the general ongoing registration conditions
April 2018	Secure OfS portal opens for applications to the new register
April 2018 to August 2019	Transitional arrangements in place for regulating existing providers
16 April 2018	Indicative deadline for providers with early UCAS application cycles to apply for registration, with the aim of being registered by mid-July 2018. We anticipate that applications after this date are unlikely to be assessed in time for the provider to be registered by July 2018
30 April 2018	Indicative deadline for remaining providers to apply for registration, with the aim of being registered by mid-September 2018. We anticipate that applications after this date are unlikely to be assessed in time for the provider to be registered by mid-September 2018
May 2018	The OfS starts assessing applications

Date	Activity
July 2018	OfS confirms registration status for providers with courses that have an early UCAS application deadline (i.e. Medicine, Veterinary, Oxbridge, and Conservatoire applicants)
Mid September 2018	The OfS publishes the register for the first time. This will list registered providers and details of their registration for students starting to choose a course and a provider for study from the beginning of the 2019/20 academic year. The register will then be updated on an ongoing basis from this date onwards
from 1 August 2019	The new regulatory framework will be fully in force and transitional provisions discussed in this chapter will no longer apply

414. Providers seeking registration solely to be eligible to apply for, or maintain, a Tier 4 licence from 2019/20 will need to apply in accordance with the timescales for entry to the Approved category.

415. Providers with an existing Tier 4 licence will need to continue to have educational oversight checks conducted during 2018/19 to maintain their licence and, as necessary, will need to reapply for their Tier 4 licence if it expires in 2018/19. The OfS will seek to avoid conflict between these educational oversight checks and those being carried out for entry to the register to reduce the administrative burden upon providers. The terms and duration of a licence will remain extant during transition unless the provider fails to meet either the existing educational oversight checks, the conditions for joining the OfS register, or does not comply with other Tier 4 requirements.

416. Providers who wish to register as Registered basic may apply alongside providers wishing to be registered in the Approved categories. However, the OfS is unlikely to register these providers until later in autumn 2018, as they are not constrained by the student funding timetable or by Tier 4 licensing arrangements.

### **Evidence required for registration**

417. When the OfS publishes its final guidance February/March 2018, having taken into account responses to this consultation, it will set out the evidence required in order to assess a provider for registration. Details on the proposed evidence is set out in the document “Approach to transition – provider roadmaps.

418. The minimum requirements that the OfS expects providers to meet to merit registration are the same for all providers in a particular category of the register, although the evidence used to demonstrate that the requirements are met may be different for different providers.

419. Providers will need to indicate in which category they wish to be registered when they apply. If applying for registration in the Approved (fee cap) category, they will also need to indicate if they wish to charge tuition fees above the “basic amount” from the academic year 2019/20. See further below regarding applicable access and participation requirements.

#### *Requirements for existing HEFCE funded providers or providers with DfE specific course designation*

420. For providers currently regulated by HEFCE or by DfE, OfS will use and assess existing evidence during the registration process. For example, the financial information provided during the annual accountability return or for annual re-designation, and the outcomes of recent quality assessment activity will be used to assess compliance with the initial registration conditions. Providers will also have to demonstrate that they comply with new initial registration conditions, for example to have in place an appropriate student protection plan, for which existing evidence does not exist.

421. This approach is intended to ensure that OfS will have available the evidence it requires to assess each provider’s compliance with the initial registration conditions, but to do so in a way that minimises the regulatory burden on current providers. Providers should not be asked to provide similar pieces of evidence twice and should have sufficient time to provide evidence in relation to new requirements.

#### *New applicants*

422. New applicants are those that are not currently designated for student support by the Secretary of State or HEFCE funded. The DfE has previously said (in the recently published and final iteration of [Specific Course Designation Guidance for Alternative Providers](#)) that Alternative Providers seeking designation for student support for the first time in 2018/19 are encouraged to apply for designation by the end of January 2018 to be designated in time for the start of the 2018/19 academic year. After this date, those providers seeking to enter the regulated system for the first time for 2019/20 must register with the OfS.

423. As new providers will not have submitted existing evidence to HEFCE or DfE they will be expected to submit evidence, which demonstrates they are able to

comply with the initial conditions. For the initial quality and standards conditions new applicants will be assessed using the outcomes of an entry review conducted by the DQB. However, we do not expect this review will be available until autumn 2018. We therefore advise new applications with a track record to complete a quality review with the QAA in advance of the register opening in April 2018. Under current timescales we would recommend applying by 31 January 2018. Providers without a track record will need to await the new quality review process, which will be designed to enable for the first time, providers without a track record.

### *Access and participation plans and statements*

424. Having an approved access and participation plan will be a registration condition for an Approved (fee cap) provider wishing to charge tuition fees above the basic amount from academic year 2019/20. Publishing an access and participation Statement will be a registration condition for an Approved (fee cap) provider wishing to charge up to the basic amount or an Approved provider. We expect the OfS/P will issue guidance, including a suggested timetable, to the sector on access and participation plans in early 2018 and that the assessment of plans will be conducted to a timescale consistent with the broader approach to initial registration.

425. For those applying to the Approved (fee cap) category submission of access and participation plans for approval will be made as part of the overall evidence and application to the OfS to register. Providers wishing to charge fees above the basic amount in academic year 2019/20 will need to have a plan approved by the OfS before the provider can be registered.

### **Assessment of an Application**

426. Once a provider's application has been assessed as meeting the registration conditions that provider will be entered on the register in the relevant category. The OfS will inform the provider of the outcome of its application. The provider's registration status will be published on the OfS register in line with the timescales set out above. Please refer to chapter 7 for the content of the register.

427. If the OfS intends not to register a provider in the requested category, the OfS will write to the provider setting out the reasons for its intention in accordance with section 4 of HERA. The provider will have a period of not less than 28 days (specified in the notice) to make representations against the proposed intention.

428. If a provider fails to meet the registration requirements, it may reapply to the OfS for registration once it has taken action to address any areas of non-compliance.

## Regulation of providers during 2018/19

### *Existing previously HEFCE funded providers and existing Alternative Providers*

429. HEFCE and OFFA will cease to exist when the relevant provisions of HERA come into force in April 2018. Transitional provision will be made in regulations to enable the OfS to take on the statutory functions of HEFCE and the DFA during the rest of academic year 2017/18 and the whole of academic year 2018/19. Current HEFCE funded providers will therefore be regulated by the OfS primarily under the Further and Higher Education Act 1992 (“1992 Act” and the Higher Education Act 2004 during the transition period. This means that regulation during this period will be undertaken on the basis of conditions of grant funding as currently expressed in the HEFCE Memorandum of Assurance and Accountability.
430. Alternative Providers will continue to be regulated by DfE using the Secretary of State’s powers to designate institutions for student support (as they are at present).
431. From 1 August 2019, all registered providers will be required to comply with all the general ongoing registration conditions applicable to their registration category and any specific ongoing registration conditions that the OfS has imposed.
432. However, between 1 August 2018 and 31 July 2019 the following ongoing registration conditions will be in effect for a provider registered in the Approved categories. This approach seeks to avoid double regulation to the greatest extent, whilst also ensuring that any changes to those providers that might impact on their registration status are identified and appropriate action taken to protect the interests of students due to be studying in 2019/20:
- a. a Student Protection Plan (condition F)
  - b. notification of changes to the register to maintain accuracy (condition I)
  - c. provision of information that OfS requires to perform its functions (condition J1)
  - d. accountability (condition O)
  - e. any specific ongoing registration conditions applicable to an individual provider
433. The OfS will also impose a transitional ongoing registration condition that:
- a. HEFCE funded providers must comply with the conditions of funding currently set out in the Memorandum of Assurance and Accountability

- b. Alternative Providers must comply with conditions of designation imposed by the Secretary of State

434. The only ongoing registration conditions that will be in effect for a provider registered in the Registered basic category will be:

- a. Notification of changes to the register to maintain accuracy (condition I)
- b. Provision of information that OfS requires to perform its functions (condition J1)
- c. Accountability (Condition O)

435. The other general ongoing registration conditions will not come into force until 1 August 2019. This is to avoid double regulation to the greatest extent possible. It will also give providers time to prepare to ensure that they are able to comply with all ongoing registration conditions as soon as these are in force.

436. During the transitional period, the OfS will be able to use existing HEFCE and DFA approaches to enforce conditions of funding under the powers in the 1992 Act and the Higher Education Act 2004 and DfE will continue to be able to use its powers in relation to alternative providers during this period. The OfS will also have the power to impose sanctions in respect of providers registered for 2019/20, such as suspending a provider from the register or to de-register a provider if it breaches any of its ongoing registration conditions during 2018/19. This ensures students can have confidence about a provider's status on the OfS's register during this period. Further details on sanctions can be found in Chapter 5, part E.

### *Newly registered providers*

437. New providers which have not previously been subject to regulation by HEFCE or for student support purposes by DfE will not be subject to any ongoing regulation under the brought forward 1992 Act powers. It will be important, however, to ensure that any changes to those providers that might impact on their registration status are identified. This ensures students can have confidence about a provider's status on the OfS's register during this period. Therefore, we propose that the OfS will apply the same ongoing registration conditions as to existing providers, including the FSMG and quality and standards conditions. New providers will be subject to the following registration conditions if they want to recruit students from 2019/20.

438. From 1 August 2019, all registered providers will be required to comply with all the general ongoing registration conditions applicable to their registration category and any specific ongoing registration conditions that the OfS has imposed.

439. However, between 1 August 2018 and 31 July 2019 the only ongoing registration conditions that will be in effect for a new provider registered in the Approved categories will be:

- a. Quality and Standards (conditions B and C)
- b. Financial Sustainability (condition D)
- c. Management and Governance (condition E)
- d. A Student Protection Plan (condition F)
- e. Notification of changes to the register to maintain accuracy (condition I)
- f. Provision of information that OfS requires to perform its functions (condition J1)
- g. Accountability (condition O)
- h. Any specific registration conditions applicable to an individual provider

440. The only ongoing registration conditions that will be in effect for a provider registered in the Registered basic category will be:

- a. Notification of changes to the register to maintain accuracy (condition I)
- b. Provision of information that the OfS requires to perform its functions (condition J1)
- c. Accountability (Condition O)

441. The OfS will have the power to impose sanctions, such as suspending a provider from the register or to de-register a provider if it breaches any of its ongoing registration conditions during 2018/19.

#### *Further detail*

442. Transitional arrangements are complex and the OfS will work with providers to ensure as smooth a transition as possible.

443. We have set out further details about our proposed transitional arrangements in the document “Approach to transition – provider roadmaps”. This includes further detail on the timings for:



- a. DAPs and UT<sup>34</sup>
- b. data collections
- c. transfer from a Further Education Corporation to a Higher Education Corporation
- d. providers solely seeking eligibility for a Tier 4 licence application
- e. how providers with Royal Charters or Private Acts are affected

***Question: Does the information provided offer a sufficiently clear explanation of how a provider will apply for registration in the transitional period and what the consequences of registration are in this period?***

### **Transitions**

444. The HERA transitional and commencement regulations being made by the Secretary of State will contain the transitional provisions required to enable the OfS systems in the period up to the introduction of the new regulatory framework on 1 August 2019 to interface effectively with current regulatory arrangements. As these are matters of technical legislative detail only, they are outside the scope of this consultation.

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<sup>34</sup> For details on the changes to DAPs and UT criteria and processes, please refer to [Simplifying access to the market: Degree Awarding Powers & University Title](#)

## PART V – Annexes

### Annex A – Registered basic status – registration process and ongoing monitoring

445. A provider who wishes to be recognised as an English higher education provider, but does not want to access Government funding or student support, or to obtain or maintain a Tier 4 licence or Degree Awarding Powers or University Title, may apply to be registered in the Registered basic category.
446. We recognise that a diverse range of providers, delivering a wide range of different courses, may wish to register in this category, including those who deliver courses leading to the grant of:
- a. an award by a UK degree awarding body or Ofqual-regulated awarding organisation
  - b. an award by another type of UK awarding body or organisation
  - c. an award by an overseas body with Degree Awarding Powers
  - d. an award by a professional body
  - e. the provider's own award
447. To comply with initial condition C2, providers seeking registration in the Registered basic category will be required to submit to the OfS a list of courses that they consider to be at higher education level, together with additional information about the level of those courses. The level of additional course information to be submitted will depend upon which body or organisation awards the qualification and further details are given below.
448. The OfS, with the assistance of the DQB where appropriate, will then assess the application to determine whether the provider does provide courses at a higher education level, being courses which match the academic standards as they are described in the FHEQ at Level 4 or above. This is in addition to the eligibility criteria for registration which state that a provider must offer higher education which is more broadly defined as delivering a course of any description mentioned in Schedule 6 of the Education Reform Act 1988.

**Information to be submitted about courses which lead to the grant of an award by: (i) a UK degree awarding body; or (ii) an awarding organisation regulated by Ofqual**

449. For courses which lead to the grant of an award by a UK degree awarding body or an Ofqual-regulated awarding organisation, the provider will be expected to submit a list of higher education courses and a letter of confirmation from the relevant awarding body or organisation confirming that:

- a. the provider is approved to deliver the course(s); and
- b. the courses match the academic standards as they are described in the FHEQ at Level 4 or above.

**Information to be submitted about courses which lead to the grant of other types of award**

450. For other types of course the provider will be required to submit the following information:

- a. a list of higher education courses
- b. the document for each relevant course that sets out the programme structure, content, assessment and intended learning outcomes
- c. evidence illustrating the provider's (or awarding body) approach to setting and maintaining academic standards for its higher education provision
- d. evidence the provider has to demonstrate that students are achieving outcomes at the appropriate level, for example course records or data from a selection of the courses

451. The OfS will then commission the DQB to assess the evidence provided to determine whether the courses are of a higher education level. In carrying out this assessment, the DQB would not confirm the level of each course. Rather it would provide a confirmation that the systems for determining the levels of the relevant courses are robust and that therefore, those which the provider identifies as higher education match the academic standards as described in the FHEQ at Level 4 or above.

**Ongoing registration conditions– supply of information**

452. Once a provider is registered in the Registered basic category, the OfS will notify the OIA of the registration and will share with the OIA the list of courses that were considered and confirmed to be at higher education level during the registration process together with any other relevant information.

453. When registration is granted, the provider will be expected to clearly identify on its website which of its courses are at higher education level. These courses will be within the scope of the OIA scheme, which should also be indicated on the provider's website. This information must be kept up-to-date and should include a list of higher education courses which have been discontinued within the previous 24 months, to enable access to historical data for the sector.

454. All registered providers must comply with the general ongoing registration conditions (set out in chapter 5). For a Registered basic provider, this is likely to include supplying information to the OfS annually about the higher education courses that it offers, including information about:

- a. existing courses which were newly categorised as being at a higher education level within the reporting year
- b. new higher education courses which were introduced within the reporting year
- c. higher education courses which were discontinued within the reporting year

455. The OfS will undertake random sampling of the way higher education courses are described to applicants and students, including on the provider's website. Sampling may be more likely for those providers in which there is a significant increase in the number of new higher education courses within a reporting year, and where the courses lead to awards which are not granted by a UK degree awarding body, or an Ofqual-regulated awarding organisation.

456. The OfS will also investigate if there is evidence that suggests that a provider may be in breach of its ongoing registration conditions, for example, where the OIA reports a number or pattern of student complaints that represents cause for concern.

## Annex B – Intervention processes

### Specific ongoing conditions

457. Section 6 of HERA 2017 sets out the process by which the OfS will impose specific ongoing registration conditions. The OfS will notify the provider's governing body of its intention to impose a specific ongoing registration condition; this notification will include:
- a. the details of the specific ongoing registration condition(s)
  - b. the reason for imposing the specific ongoing registration condition(s)
  - c. the period during which the governing body of the institution may make representations about the proposed specific ongoing registration condition(s), the way in which those representations may be made and the deadline for making any such representations (this will not be less than 28 days beginning with the date on which the notice is received)
458. If the provider's governing body makes any representations by the deadline, then the OfS will have regard to these in deciding whether to impose the specific ongoing registration condition(s). The OfS will then inform the provider's governing body of its decision and the date when it takes effect. In addition to these legal requirements, the OfS will inform the provider's governing body of:
- a. how it will monitor the provider's compliance with the specific ongoing registration condition
  - b. what the provider needs to deliver to meet the condition and give OfS sufficient assurance and confidence to lift the condition

### Monetary Penalties

459. The OfS will notify the provider's governing body of the intention to impose a monetary penalty and the amount of and reason for the proposed penalty. Providers will then have a specified period to make representations about it, which must be not be less than 28 days from the date when the notice is received by the provider. The OfS must have regard to these representations in taking a final decision about the monetary penalty. At the end of that process the OfS may issue a penalty, specifying the amount and the period within which it must be paid. If the provider disagrees with the decision to impose the penalty or the amount of the penalty, then the provider can appeal to the First Tier Tribunal. The requirement to pay the penalty is suspended at any time when an appeal could be brought or such an appeal is

pending. An appeal can be lodged if the provider thinks the decision is based on a factual error, if they think it is wrong in law or if they think it is unreasonable.

## **Suspension**

460. The OfS will usually notify the provider's governing body of the intention to suspend its registration, the excepted purposes and the remedial conditions that the provider would need to meet in order to restore registration, the period of time (not fewer than 28 days from receipt of the notification) to make any representations and the way in which representations may be made. The OfS will have regard to any representations made by the deadline in deciding whether to suspend the provider's registration. The OfS will notify the provider's governing body of its final decision and this notification will include the date on which the suspension takes effect, the excepted purposes, the remedial conditions (if any) and confirmation as to the grounds for suspension. However, where there is an urgent need to protect public money (e.g., due to the material risk of fraud or the misuse of public funds), the OfS will suspend registration with immediate effect and notify the governing body of the suspension – the notification will include the same information as required for OfS's notification of a final decision.

461. The suspension will remain in place for as long as is necessary to resolve the issues that led to the suspension. Resolution of these issues may be through investigation (i.e. an intervention) and could lead to further sanctions, as appropriate, or restoration of payments.

## **De-registration**

462. The OfS will notify the provider's governing body of the intention to remove its registration, the reasons for proposing to remove the provider from the register, the period of time (not fewer than 28 days from receipt of the notification) to make any representations and the way in which representations may be made. The OfS will have regard to any representations made by the deadline in deciding whether to remove the provider's registration. The OfS will notify the provider's governing body of its final decision and this notification will include the date on which the removal takes effect and information about the grounds for removal, rights of appeal and the period within which the appeal may be made. A provider that OfS is proposing to remove from the register has a right of appeal against the decision itself and the date of removal from the register. The provider may appeal to the First Tier Tribunal. A provider can make an appeal on three grounds: that the decision was based on an error of fact; was wrong in law; or was unreasonable.

463. There are four possible outcomes of an appeal. The Tribunal may: withdraw the removal; confirm the removal; vary the date on which the removal takes effect; or

remit the decision whether to confirm the removal, or any matter relating to that decision, to the OfS.

464. The above refers only to deregistration initiated by the OfS, not cases where the provider has requested deregistration voluntarily.

## Annex C – the OfS as Principal Regulator for Exempt Charities

465. Many higher education providers hold charitable status. Some are registered with and regulated directly by the Charity Commission. However, some charities (called “exempt charities”) are exempt from registration and direct regulation by the Charity Commission. Their trustees have the same basic responsibilities as those of a registered charity, but some requirements of the Charities Act 2011 do not apply. Exempt charities generally have a Principal Regulator appointed whose duty is to promote compliance with charity law by the charities they regulate.
466. At present, HEFCE is prescribed as the Principal Regulator for many charitable publicly funded higher education providers in England that are, by virtue of Schedule 3 to the Charities Act 2011, exempt charities. Broadly, this is because such providers are regulated by HEFCE. Enabling them to be exempt charities frees them from the unnecessary burden of duplication of regulation. Charitable providers that are not publicly funded and therefore not regulated by HEFCE cannot be regulated by HEFCE as Principal Regulator in this way and instead are registered with and regulated directly by the Charity Commission.
467. One effect of the implementation of HERA is that HEFCE will cease to exist after April 2018, and so will no longer be able to continue as Principal Regulator.
468. As set out in the white paper, the Government’s proposed solution is to allow the continuation of existing exempt providers’ status where the OfS will have sufficient regulatory oversight, by making the OfS the new Principal Regulator from April 2018.
469. As the OfS will regulate more providers under its regulatory framework from the academic year 2019/20, there is also an opportunity for the Secretary of State to consider the case for extending the scope of exempt status to a wider range of charitable providers, going beyond those receiving grant funding. A determining factor for the Secretary of State is likely to be whether OfS regulation is sufficient, particularly in relation to financial sustainability and management and governance. Any extension of exempt status would need to be justifiable as ensuring the appropriate or effective regulation of the relevant bodies as charities.
470. Based on the proposals in this consultation, we currently expect that charitable providers in the Approved categories would be subject to sufficient regulatory oversight from the OfS to potentially be suitable for exempt charity status. This is particularly because three of the conditions to which these providers are subject relate to financial sustainability, management and governance (see conditions D, E1, E2) and the provision of information (see condition J1).



471. However, the detail will be worked up following this consultation and may require further informal consultation with the providers that would be affected by such a change.

***Question: Do you have any comments on the above proposal of how the OfS will act as the principal regulator for exempt charities?***

***Question: Provided that the Secretary of State considers OfS regulation is sufficient for these purposes, should exempt charity status apply to a wider group of charitable higher education providers? In particular, considering that providers in the Approved categories will be subject to conditions relating to Financial Sustainability, Management and Governance, and the provision of information (as set out in the Guidance), do you have any views on whether the OfS's proposed regulation of providers in these categories would be sufficient for the purposes of it carrying out the functions of Principal Regulator?***

# Glossary

## **Accelerated degree**

An accelerated degree is a Level 6 qualification where the number of academic years to be completed is at least one fewer than would normally be the case for that course (or a course of equivalent content). Higher education providers currently use a variety of terms for degree qualifications which appear to be ‘accelerated’. These include degrees described as: “fast-track”, “two-year”, “compressed”, “time-compressed”, “condensed”, and “intensive” – as well as “accelerated”.

## **Access and participation plan (previously known as an Access Agreement)**

An Access and participation plan (providers in England) sets out how a provider will sustain or improve access, and student success, which includes retention, attainment and employability for students from disadvantaged and under-represented groups in higher education. plans will be approved by the Director for Fair Access and Participation.

## **Access and participation statement**

A statement published by a provider that sets out their commitment to access and participation in higher education. These statements do not have to be agreed by the Director for Fair Access and Participation.

## **Alternative Provider(s) (APs)**

Any provider of higher education courses which does not directly receive annual funding from HEFCE or its equivalent bodies in the devolved administrations, does not receive direct annual public funding, and is not a further education college.

## **Approved**

Registration category for providers that want to access student finance that do not want to be eligible for OfS grant funding and or to have fee cap obligations.

## **Approved (fee cap)**

Registration category for providers that want to be eligible for OfS grant funding in return for a fee cap and access and participation plan (where charging the higher fee amount).

## **APs**

See "Alternative Providers (APs)".

## **Baseline requirements (and relationship with conditions)**

“Baseline requirements” are those “Conditions of registration” (see glossary) which specifically mitigate the four student risks that the OfS is seeking to manage, as set out in chapter 1. They are, (except where they refer to access and participation), expressed as outcomes, setting out the minimum level a provider must achieve and demonstrate in order to be registered. All are “General ongoing conditions of registration”, some are also “initial conditions of registration” which must be demonstrated during initial application to the register.

## **CMA**

See "Competition and Markets Authority (CMA)".

## **Competition and Markets Authority (CMA)**

The CMA is responsible for promoting competition for the benefit of consumers, including in the Higher Education market.

## **Conditions (ongoing, initial, specific)**

“Conditions”, and “registration conditions” are the general terms used to mean all types of condition that a provider must meet and demonstrate in order to be registered. They include “initial registration conditions” which are the conditions a provider must demonstrate it has met as part of its initial application to join the register and on a continuous basis thereafter, “general ongoing registration conditions” which are those that a provider must meet once they have joined the register in order to maintain their registered status, and “specific ongoing registration conditions” which are additional conditions imposed by the OfS to mitigate or manage specific risks or weaknesses identified.

## **Criteria**

Statements against which assessors will make judgements.

## **DAPs**

See "Degree Awarding Powers".

## **Data**

Facts and figures, both quantitative and qualitative, which can be collected, processed and analysed in order to generate additional information. References to “information” can be taken to include “data” as one source of information.

## **DDB**

See "Designated Data Body (DDB)".

## **Degree Awarding Powers**

Providers that wish to award their own degrees (as opposed to delivering courses that lead to a degree from another provider) must first apply for and obtain Degree Awarding Powers, commonly referred to as DAPs. It is an offence to offer degrees that are not awarded by or on behalf of a provider with DAPs. There are different types of DAPs, which entitle the holder to award different types of degrees. For example, providers with Foundation DAPs can only award Foundation Degrees, but not higher degrees, such as Bachelor degrees.

## **Delivery provider**

In the context of a franchising arrangement, the ‘delivery provider’ is the provider that delivers higher education level provision to students on behalf of another higher education provider who remains responsible for the delivery of their provision (the ‘lead provider’).

## **Department of Health (DH)**

The Government department responsible for health and care in England.

## **De-registration**

The OfS has the power to de-register a provider either where the OfS has previously imposed a monetary penalty or suspended the provider in relation to breach of one of its ongoing registration conditions and it appears to the OfS that there is again a breach or a continuing breach of that condition or there is or has been a breach of a different condition; or where it appears to the OfS that there is or has been a breach of one of the provider’s ongoing registration conditions and that a monetary penalty or suspension is insufficient to deal with the breach.

### **Designated Data Body (DDB)**

A data body for higher education in England that can perform data functions on behalf of the OfS, including data collection, data processing, data storage, data publication and provision. The DDB is designated by the Secretary of State for Education on the advice of the OfS.

### **Designated Quality Body (DQB)**

A body that carries out the quality and standards assessment functions set by the OfS. The DQB is designated by the Secretary of State for Education on the advice of the OfS.

### **DFAP**

See "Director for Fair Access and Participation (DFAP)".

### **DH**

See "Department of Health (DH)".

### **Director for Fair Access and Participation (DFAP)**

The Director for Fair Access and Participation is a member of the OfS board and will play a crucial role in ensuring higher education institutions are doing all they can to support underrepresented groups, from widening access, to monitoring retention, attainment and progression from higher education.

### **DQB**

See "Designated Quality Body (DQB)".

### **Education and Skills Funding Agency (ESFA)**

The ESFA works with academies, Sixth Form Colleges, Further Education Colleges, employers and independent learning providers, monitoring risk and intervening where there is failure or where there is evidence of mismanagement of public funds.

### **Electoral registration of students**

The registration of students on a register of electors maintained by an electoral registration officer in England (as appointed under section 8(2) of the Representation of the People Act 1983).

## **Enhanced Monitoring**

The OfS may require additional data/information from a provider, or may need to investigate a specific concern where a provider is at risk of breaching its ongoing conditions.

## **Entry and Search**

The OfS may, in exceptional circumstances, use its powers of entry and search to investigate suspected serious breaches of a provider's OfS ongoing registration conditions, its OfS funding or student support funding conditions, such as financial irregularity.

## **Equality of opportunity**

Equality of opportunity in connection with access to and participation in higher education provided by English higher education providers.

## **ESFA**

See "Education and Skills Funding Agency (ESFA)".

## **Exempt Charity**

An institution established in England and Wales for charitable purposes which is exempt from registration with, and reduced oversight by, the Charity Commission for England and Wales.

## **Exit the market**

A provider leaving the sector and ceasing to deliver HE courses. A provider might exit the market deliberately (e.g. for strategic reasons) or for other reasons (e.g. loss of registration, or financial failure).

## **FECs**

See "Further Education Colleges (FECs)".

## **Fee limit**

"Fee limit" means a limit on the tuition fees which a provider in the Approved (fee cap) category of the register may charge, as prescribed in regulations made under Schedule 2 of HERA.

## **FHEQ**

See "Framework of Higher Education Qualifications (FHEQ)".

### **Framework of Higher Education Qualifications (FHEQ)**

The FHEQ sets out five increasing levels of higher education qualifications, which are illustrated by typical qualifications for that level, for example Higher National Certificates, Graduate Diplomas, Bachelor Degrees. Each level includes a descriptor that sets out the generic outcomes and attributes expected for the award of qualifications at that level.

### **Franchising**

A franchising agreement is a sub-contractual relationship, which allows a degree awarding body to form an agreement with a provider to deliver all, or part, of a programme which is approved and owned by the degree awarding body. The franchising institution retains overall control of the programme's content, delivery, assessment and quality assurance arrangements.

### **Further Education Colleges (FECs)**

Colleges that primarily provide any study after secondary education that's not part of higher education (that is, not taken as part of an undergraduate or graduate degree).

### **General ongoing registration conditions**

"General ongoing registration conditions" are those that a provider must meet once they have joined the register in order to maintain their registered status. See "Conditions".

### **Governing body**

As defined in section 85 of HERA. Broadly, this will be any board of governors of the institution or any persons responsible for the management of the institution/company, or an equivalent controlling body, for example the board of a company, the trustees of a charity, etc.

### **Higher education provider**

A higher education provider (or provider) is an organisation that delivers higher education, as defined in Schedule 6 of the Education Reform Act 1988. A provider can be an awarding body or deliver higher education on behalf of another awarding body. The term encompasses current higher education institutions, further education colleges and alternative providers. Unless stated otherwise, in this document 'provider' or 'higher

education provider' refers to a registered higher education provider, as defined in section 83 in HERA.

## **HO**

See "Home Office (HO)".

## **Home Office (HO)**

The Home Office is the lead Government department for immigration and passports, drugs policy, crime, fire, counter-terrorism and police.

## **IfA**

See "Institute for Apprenticeships (IfA)".

## **Information**

Includes data, along with additional intelligence, evidence and knowledge which will all provide context and deliver insights.

## **Initial conditions**

"Initial conditions of registration" are the conditions a provider must demonstrate it has met as part of its initial application to join the register and on a continuous basis thereafter. See "Conditions".

## **Institute for Apprenticeships (IfA)**

The Institute for Apprenticeships ensures high-quality apprenticeship standards and advises Government on funding for each standard.

## **Intervention**

Action by the OfS (including the possibility of imposing sanctions) to address either a provider breaching, or an increased risk of a provider breaching, its ongoing conditions.

## **Lead indicators**

Indicators constructed from data and information flows, in as near real time as possible, that allow the OfS to anticipate future events.



## **Lead provider**

In the context of a franchising arrangement, the 'lead provider' is the provider that enters a franchising arrangement with a 'delivery provider' that delivers higher education level provision to students on behalf of the 'lead provider', while the 'lead provider' remains responsible for the funding and quality of that provision.

## **Monetary Penalties**

The OfS may decide to impose a monetary penalty where a provider has deliberately or negligently breached its ongoing conditions, or has been dishonest and concealed information or has had repeated breaches or where other interventions have failed.

## **National College of Teaching and Learning (NCTL)**

The NCTL is responsible for the accreditation of initial teacher training leading to the award of Qualified Teacher Status.

## **NCTL**

See "National College of Teaching and Learning (NCTL)".

## **New provider**

A provider that at the point of applying for the OfS register has not previously been regulated by HEFCE or DfE.

## **Office for Standards in Education, Children's Services and Skills (Ofsted)**

Ofsted inspects and regulates services that care for children and young people, and services providing education and skills for learners of all ages.

## **Office of Qualifications and Examinations Regulation (Ofqual)**

Ofqual regulates qualifications, examinations and assessments in England. This includes GCSEs, A levels, AS levels and vocational and technical qualifications but does not include Degrees. Ofqual regulated qualifications are referenced against the Regulated Qualification Framework (RQF). The RQF aligns with the FHEQ at levels 4-8. They have five statutory objectives, which are set out in the Apprenticeship, Skills, Children and Learning (ASCL) Act 2009. In brief, they are: to secure standards in qualifications; to promote national assessment standards; to promote public confidence in regulated qualifications and National Assessment arrangements; to promote awareness of the range of benefits of regulated qualifications; and to secure that regulated qualifications are provided efficiently.

## **Office of the Independent Adjudicator (OIA)**

The Office of the Independent Adjudicator for Higher Education is designated under the Higher Education Act 2004 as the operator of the complaints scheme (OIA Scheme) for higher education students in England and Wales.

## **Ofqual**

See "Office of Qualifications and Examinations Regulation (Ofqual)".

## **Ofsted**

See "Office for Standards in Education, Children's Services and Skills (Ofsted)".

## **OIA**

See "Office of the Independent Adjudicator (OIA)".

## **Principal Regulator**

Many higher education providers are exempt charities and HEFCE (rather than the Charity Commission for England and Wales) is currently their principal regulator. HEFCE has the duty to promote compliance with charity law by these providers. It is our intention that the OfS will take over this function from HEFCE.

## **Provider**

An English Higher Education Provider as defined in s83 in HERA (unless stated otherwise).

## **Quality assessment**

Quality assessment is a collective term used to refer to arrangements for ensuring higher education providers meet baseline expectations for academic quality and standards. There are different arrangements in operation in different parts of the UK and, in some parts, for different types of providers but in all cases, expectations are underpinned by the UK Quality Code for Higher Education.

## **Registered basic**

Registration category for providers that want to be officially recognised as offering Higher Education courses.

## **Regulatory risk**

The risk of the institution, when it is registered, failing to comply with regulation by the OfS.

## **Reportable event**

An event that requires a provider to notify OfS of material decisions/changes, such as a change in control or borrowing above a certain level.

## **Risk Monitoring**

The process by which the OfS will identify and respond (if necessary) to an increased risk to student outcomes and delivering value for money, while remaining proportionate in its regulation of providers. It is based upon a provider continuing to meet its baseline requirements of registration, and will take the form of general monitoring, applied to all providers, and enhanced monitoring/engagement for individual providers where an increased risk has been identified or where there is a suspected/actual breach of conditions.

## **Sanction**

The OfS may impose a monetary penalty on or suspend or de-register a registered higher education provider where it appears that there is or has been a breach of a provider's ongoing registration conditions.

## **School Centred Initial Teacher Training providers (SCITTs)**

Networks of schools that have been approved to run school-centred courses are known as SCITTs (School Centred Initial Teacher Training providers). SCITTs provide practical, hands-on teacher training, delivered by experienced, practising teachers based in their own school or a school in their network.

## **SCITTs**

See "School Centred Initial Teacher Training providers (SCITTs)".

## **Specific ongoing registration conditions**

The OfS may decide to impose a specific ongoing registration condition where the OfS has identified that the provider needs to take further action where there is a risk of a breach of a general ongoing registration condition or to stop a breach. The specific ongoing registration condition will be targeted to mitigate the specific risk that is posed

and should be focused on actions or activities by the provider, which the OfS may require to ensure it meets its ongoing conditions.

## **Standards**

The standards set by degree-awarding bodies for their courses (programmes and modules) and expected for their awards.

## **STEM**

Acronym for Science, Technology, Engineering and Mathematics.

## **Student consumer rights**

For the purposes of this consultation, student consumer rights refer to those set out in the CMA's guidance 'UK higher education providers – advice on consumer protection law'. This guidance gives the CMA's view of what providers should do to meet their obligations under consumer law at different stages of the student journey, and sets out three areas for consideration by providers: Information – this must be clear, accurate and timely; Terms and conditions e.g. of contracts – these must be fair and transparent; Institutional complaint handling processes and practices – these must be clear and fair.

## **Student Protection Plan**

A document which sets out what actions the provider will take to minimise any impact on the continuity of study of their students. It will also include examples of what events may trigger the plan, such as the closure of a course, campus or location, the discontinuation of a discipline or market exit. This document must be approved by the OfS, and readily available to current and potential students.

## **Student support**

The Government provides financial support for tuition fees and living costs for students who live permanently in England and students from the European Union, who are studying in England. The Student Loans Company makes this support available as grants or loans.

## **Student transfer**

The movement of students between courses and/or providers.

## **Suspension**

The OfS may decide to suspend a provider or suspend some of its provision or activities where a provider has breached its ongoing conditions and action needs to be taken to immediately reduce the impact of the risk on students or the taxpayer and ensure it does not get worse.

## **Teach Out**

Teach out is where the OfS allows a de-registered provider's existing students to continue to access student support because it is in the students' interest to do so until the course is completed.

## **Teaching Excellence and Student Outcomes Framework (TEF)**

A new scheme for recognising excellent teaching, in addition to existing national quality requirements for universities, colleges and other higher education providers. It provides information to help prospective students choose where to study.

## **TEF**

See "Teaching Excellence and Student Outcomes Framework (TEF)".

## **Terms and conditions of funding**

Also referred to as "terms and conditions of grant" or "terms and conditions associated with OfS and/or UKRI funding". This refers to any funding given to providers by the OfS or UKRI under sections 39, 40 and 93 of the Higher Education and Research Act 2017, and any terms and conditions OfS and UKRI may attach to this funding. For example, where a provider receives grant funding for a particular purpose, such as a specific research project or for a particular strategic development, these terms and conditions might restrict what purpose the funds can be used for, any terms the provider must comply with, and/or any enforcement mechanisms, such as claw back provisions.

## **Tier 4**

The UK operates a points-based immigration system underpinned by the principle of visa sponsorship. Tier 4 is the immigration category in which a student from outside the European Economic Area (or Switzerland) may be issued a visa to study in the UK.

## **UK Research and Innovation (UKRI)**

This new public body will be in place of the 7 Research Councils, Innovate UK, and the research and knowledge exchange functions of the Higher Education Funding Council for England (HEFCE).

## **UKRI**

See "UK Research and Innovation (UKRI)".

## **University Title (UT)**

Not all higher education providers are universities. "University" is a protected term, and anyone wishing to use it in their title must apply for, and meet certain criteria first. An important prerequisite for being able to apply for University Title is to have DAPs.

## **UT**

See "University Title (UT)".

## **Validation arrangements**

Arrangements between one English higher education provider and another, under which the first provider grants or authorises a taught award to a person who is a student at the other provider.



Department  
for Education

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