

**Office for
Students**



**Regulatory Notice 2:
Regulation up to 31 July 2019
of providers that were previously
funded by HEFCE**

**Guidance for providers during the transition
period**

Reference **OfS 2018.12**

Enquiries to **regulation@officeforstudents.org.uk**

Date of publication **29 March 2018**

THE OFFICE FOR STUDENTS

Regulation up to 31 July 2019 of providers that were previously funded by HEFCE

Presented to Parliament pursuant to section 75 of the Higher Education and
Research Act 2017

© **Office for Students** copyright **2018**

The text of this document (this excludes, where present, the Royal Arms and all departmental or agency logos) may be reproduced free of charge in any format or medium provided that it is reproduced accurately and not in a misleading context. The material must be acknowledged as Office for Students copyright and the document title specified.

Where third party material has been identified, permission from the respective copyright holder must be sought.

This publication is also available on our website at: <https://www.officeforstudents.org.uk/>

Any enquiries regarding this publication should be sent to us at Nicholson House, Lime Kiln Close, Stoke Gifford, Bristol, BS34 8SR or info@officeforstudents.org.uk

Contents

| | |
|---|-----------|
| Introduction | 1 |
| PART A: Regulatory requirements during the transition period | 2 |
| Section 1: Regulatory requirements during the transition period | 2 |
| Terms and conditions of funding from 1 April 2018 – carried forward requirements | 2 |
| OfS ongoing conditions of registration during the transition period – new requirements | 3 |
| Section 2: Complying with the carried forward requirements | 6 |
| Submission of information | 6 |
| Existing action plans | 6 |
| Scheduled Quality Review Visits by the QAA | 6 |
| Scheduled Assurance Reviews | 7 |
| Increase in an HEI's financial commitments | 7 |
| Section 3: Complying with the new conditions of registration | 8 |
| Condition C1: Guidance on consumer protection law | 8 |
| Condition C3: Student protection plan | 8 |
| Condition E3: Accountability | 9 |
| Condition E4: Notification of changes to the Register | 9 |
| Condition F3: Provision of information to the OfS | 10 |
| Condition F4: Provision of information to the DDB | 10 |
| Condition Z1: Transition condition of registration | 11 |
| Specific ongoing conditions of registration | 11 |
| Section 4: Complying with other legal requirements | 12 |
| Registered and exempt charities | 12 |
| The Prevent duty | 12 |
| PART B: The OfS's approach to regulation during the transition period | 13 |
| Section 5: Assessing compliance with the carried forward requirements | 13 |
| Financial sustainability | 13 |
| Management and governance | 14 |
| Data assurance | 15 |
| Quality and standards | 15 |
| Regulated tuition fees, access agreements, student premium and disabled student premium funding | 16 |
| Other funding requirements | 16 |
| Section 6: Actions under the carried forward requirements | 17 |

| | |
|--|-----------|
| Interventions | 17 |
| Formal sanctions | 18 |
| Section 7: Assessing compliance with the new conditions of registration | 20 |
| Section 8: Actions under the new conditions of registration | 21 |
| Interventions | 21 |
| Formal sanctions | 22 |
| PART C: Annexes | 23 |
| Annex A: Condition Z1: Transition ongoing condition of registration | 23 |
| Annex B: Data returns | 26 |
| Annex C: Monitoring returns | 30 |
| Annex D: Annual accountability return for HEIs | 32 |
| Annex E: Reportable events | 34 |
| Annex F: Investigations | 37 |

Introduction

1. This regulatory notice sets out how providers will be regulated between 1 April 2018 and 31 July 2019. It applies to a provider that expects to register, or has registered, with the Office for Students (OfS) and is:
 - A higher education institution (HEI) funded by the Higher Education Funding Council for England (HEFCE) or the OfS during 2017-18 or 2018-19.
 - A further education college or a sixth form college (FEC) funded by HEFCE or the OfS during 2017-18 or 2018-19.
2. The guidance is intended to ensure that providers understand:
 - the regulatory requirements in place from 1 April 2018 to 31 July 2019
 - how to comply with these requirements
 - how the OfS will regulate providers during this period.
3. This guidance constitutes material published by the OfS under section 75 of the Higher Education and Research Act 2017 (HERA), and should be read in conjunction with the regulatory framework (OfS 2018.01) which sets out in full the approach to registration and regulation. If there are any inconsistencies between the regulatory framework and this document then the regulatory framework will prevail.
4. Providers designated for student support by the Secretary of State and regulated by the Department for Education (DfE) in 2017-18 and/or 2018-19 (sometimes referred to as 'alternative providers'), can find information about how they will be regulated between 1 April 2018 and 31 July 2019 in a separate regulatory notice (regulatory notice 3, OfS 2018.13). That document includes information for providers designated only for the Disabled Students' Allowance (DSA) by the Secretary of State.
5. New providers not currently funded by HEFCE, or regulated by the DfE, can find information about how they will be regulated between 1 April 2018 and 31 July 2019 in a separate regulatory notice (regulatory notice 4, OfS 2018.14).
6. The approach that the OfS has taken to the transition period is designed to deliver an equivalent regulatory effect for providers subject to different regulatory regimes: all providers will be subject to some OfS conditions of registration from the date that they are registered and these are more extensive for those providers that are not currently regulated through other means.

PART A: Regulatory requirements during the transition period

Section 1: Regulatory requirements during the transition period

7. The OfS's regulatory framework, published in February 2018 (OfS 2018.01), will not come fully into force until 1 August 2019. The secondary legislation that enacts HERA makes provision for the powers and duties of HEFCE (under the Further and Higher Education Act 1992 (FHEA)) and the Director of Fair Access to Higher Education (under the Higher Education Act 2004 (HEA)) to be exercised by the OfS until all of its new powers are commenced.
8. This means that providers subject to this regulatory notice will be funded and regulated by the OfS from 1 April 2018 to 31 July 2019 through a combination of the powers and duties 'carried forward' from the previous legislation and the new HERA powers and duties. This is called the 'transition period'.
9. The following regulatory requirements flowing from the 'carried forward' powers will apply from 1 April 2018:
 - a) The terms and conditions of OfS funding that apply to funding received from 1 April 2018 to 31 July 2019 (OfS 2018.15 and OfS 2018.16).
 - b) The terms and conditions of Research England grant that apply to funding received from 1 April 2018 to 31 July 2019.
 - c) The requirements set out in the Agreement on Institutional Designation (AID) (OfS 2018.17) that apply to the receipt of student support finance.
10. Paragraphs (a) and (b) above replicate and replace the provisions of HEFCE's Memorandum of Assurance and Accountability (MAA) (HEFCE 2017/08).
11. In addition, the following regulatory requirements will apply once a provider is registered by the OfS under its new powers:
 - a) A set of general ongoing conditions of registration that will be applied when a provider is registered.
 - b) Any specific conditions of registration that are applied when a provider is registered.
12. If a provider chooses not to register, or is unsuccessful in its application for registration, it will still need to comply with the requirements set out in paragraph 9 above up to 31 July 2019.

Terms and conditions of funding from 1 April 2018 – carried forward requirements

13. The following terms and conditions of funding are in place from 1 April 2018:

- a) Terms and conditions of OfS funding that apply to providers in receipt of OfS funding from 1 April 2018:
 - i. The document 'Terms and conditions of funding for higher education institutions' (OfS 2018.15) as published at www.officeforstudents.org.uk/#documents.
 - ii. The document 'Terms and conditions of funding for further education and sixth form colleges' (OfS 2018.16) as published at www.officeforstudents.org.uk/#documents.
- b) Terms and conditions of Research England grant:
 - i. The document 'Terms and conditions of Research England grant' is published at <https://re.ukri.org/>. This applies to providers in receipt of quality-related research (QR) or knowledge exchange funding in 2017-18 or 2018-19. Providers that also receive funding from one or more of the Research Councils will need to comply with the separate terms and conditions for that funding.

14. No material changes have been made to the terms and conditions of funding that were in place for HEFCE funded providers in 2017-18. However, as the OfS implements these requirements it will seek to do so in a way that adopts the more risk-based approach to regulation that will be in place from 1 August 2019. More information about this is set out in sections 2 and 5 below.

OfS ongoing conditions of registration during the transition period – new requirements

15. When a provider is registered by the OfS a number of ongoing conditions of registration will be imposed. Most of these conditions will apply from 1 August 2019. However, some of these conditions will apply from the date that a provider is first registered. These are set out below. The OfS may take action if a provider breaches any of these conditions of registration and the actions that may be taken are set out in section 8 below.

General ongoing conditions of registration

16. The following general ongoing conditions of registration will be applied from the date that a provider is first registered:

| General ongoing conditions of registration | |
|---|---|
| Condition C1 Guidance on consumer protection law | The provider must demonstrate that in developing and implementing its policies, procedures and terms and conditions, it has given due regard to relevant guidance about how to comply with consumer protection law. |

| | |
|--|--|
| <p>Condition C3</p> <p>Student protection plan</p> | <p>The provider must:</p> <ul style="list-style-type: none"> i. Have in force and publish a student protection plan which has been approved by the OfS as appropriate for its assessment of the regulatory risk presented by the provider and for the risk to continuation of study of all its students. ii. Take all reasonable steps to implement the provisions of the plan if the events set out in the plan take place. iii. Inform the OfS of events, except for the closure of an individual course, that require the implementation of the provisions of the plan. |
| <p>Condition E3</p> <p>Accountability</p> | <p>The governing body of the provider must:</p> <ul style="list-style-type: none"> i. Accept responsibility for the interactions between the provider and the OfS and its designated bodies. ii. Ensure the provider's compliance with all of its conditions of registration and with the OfS's accounts direction. iii. Nominate to the OfS a senior officer as the 'accountable officer' who has the responsibilities set out by the OfS for an accountable officer from time to time. |
| <p>Condition E4</p> <p>Notification of changes to the Register</p> | <p>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.</p> |
| <p>Condition F3</p> <p>Provision of information to the OfS</p> | <p>For the purposes of assisting the OfS in performing any function, or exercising any power, conferred on the OfS under any legislation, the governing body of a provider must:</p> <ul style="list-style-type: none"> i. 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. ii. 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 and must notify the OfS of the outcome of any independent verification at the time and in the manner and form specified. iii. 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 with the OfS or a person nominated by it. <p>The requirements in paragraphs (ii) and (iii) do not affect the generality of the requirement in paragraph (i).</p> |
| <p>Condition F4</p> <p>Provision of information to the DDB</p> | <p>For the purposes of the designated data body (DDB)'s duties under sections 64(1) and 65(1) of HERA, the provider must provide the DDB with such information as the DDB specifies at the time and in the manner and form specified by the DDB.</p> |

17. Guidance about these ongoing conditions of registration is found in part V of the regulatory framework (OfS 2018.01).

Specific ongoing conditions of registration

18. When a provider satisfies the initial conditions of registration, the OfS will undertake a risk assessment to determine the extent of the risk that the provider will breach one or more of its ongoing conditions. Where the OfS considers that there is increased risk of such a breach, it may impose one or more specific conditions of registration. Specific conditions of registration will be tailored to a provider's circumstances and to the particular extent and nature of the risk that the OfS is seeking to mitigate. A provider will be informed about the imposition of any specific conditions of registration when it is told about the outcome of its application for registration.
19. From the date of a provider's registration it must ensure that it satisfies any specific conditions that have been applied. The OfS may take action if a provider breaches any of these conditions and the actions that may be taken are set in section 8 below.

Transition period condition of registration

20. Each registered provider will also need to satisfy a further condition of registration for the transition period from the date of its registration to 31 July 2019.

| | |
|-----------------------------|--|
| Condition Z1 | During the transition period, the provider must comply with: |
| Transition period condition | i. The terms and conditions of OfS funding. |
| | ii. The terms and conditions of Research England grant. |
| | iii. The Agreement on Institutional Designation. |

21. This condition allows the OfS to take action under its new powers if a provider is in breach of any of the regulatory requirements imposed under the 'carried forward' powers. This means that for a very serious breach of this condition, the OfS may take action to suspend a provider's registration or to deregister it.
22. Guidance about this condition of registration is found in Annex A.

Section 2: Complying with the carried forward requirements

Submission of information

23. This section sets out the information providers will need to submit during the transition period to satisfy the regulatory requirements flowing from the 'carried forward' powers.
24. An HEI will need to:
 - a) Submit the data returns set out in Annex B that apply to it.
 - b) Submit the monitoring returns set out in Annex C that apply to it.
 - c) Submit an annual accountability return as set out in Annex D.
25. An FEC or a sixth form college will need to:
 - a) Submit the data returns set out in Annex B that apply to it.
 - b) Submit the monitoring returns set out in Annex C that apply to it.
26. FECs and sixth form colleges do not need to submit an annual accountability return as the OfS will seek assurance from the Education and Skills Funding Agency (ESFA) about their financial sustainability and financial controls.

Existing action plans

27. A provider will need to continue to implement any action plan that is in place as a result of:
 - a) The 2016-17 cycle of Annual Provider Review (APR).
 - b) A Quality Review Visit (QRV) by the Quality Assurance Agency for Higher Education (QAA).
 - c) A HEFCE Assurance Review.
 - d) A data audit.
 - e) A risk letter from HEFCE – this refers to actions required by a HEFCE risk letter, even if this is not expressed as an action plan.
28. Part B provides more information about how the OfS will monitor the progress a provider is making on the implementation of an action plan.

Scheduled Quality Review Visits by the QAA

29. A small number of providers have a Quality Review Visit (QRV) from the QAA scheduled up to 31 July 2018. These will take place as planned.
30. Providers will need to implement any action plan required as a result of a QRV.

Scheduled Assurance Reviews

31. A small number of HEIs have an assurance review (formerly called a 'HEFCE assurance review') scheduled for the period to 31 July 2018. These will take place as planned.
32. Providers will need to implement any action plan required as a result of an assurance review.

Increase in an HEI's financial commitments

33. The terms and conditions of funding require HEIs in some circumstances to obtain written approval from the OfS before increasing their financial commitments. During the transition period providers will need to seek such approval in either of the following circumstances:
 - The OfS has informed the provider that it is considered to be 'at higher risk'.
 - The OfS has informed the provider that it wishes to engage with it on the basis of 'focused dialogue'.
34. Information about the process to apply for approval is set out in Annex D of the Terms and conditions of funding for higher education institutions (OfS 2018.15).
35. Except in the circumstances set out above, a provider will not need to seek the OfS's approval before it increases its financial commitments. It will, however, need to have included any planned future borrowing in the financial forecasts submitted to HEFCE or to the OfS. If a provider has not previously included an increase in financial commitments in its submitted forecasts it must report material changes in its financial performance and position relative to its submitted forecasts. It is likely that significant increases to a provider's financial commitments will trigger this reporting requirement and it will be required to provide detailed information about its new financial commitments as part of that reporting. This will allow the OfS to:
 - Consider the impact of this borrowing on the provider's financial sustainability.
 - Decide whether the provider's risk status, or the level of engagement that the OfS has with the provider, should be changed
 - Ask the provider to develop an action plan to mitigate increased risk if the OfS decides to increase the provider's risk status or level of engagement – this will provide the OfS with a similar level of assurance to that gained by HEFCE through the conditions it imposed through its financial commitment approval process.
36. If HEFCE has previously approved financial commitments for a provider, and in doing so has applied conditions to that approval, the provider must continue to comply with these unless the OfS notifies the provider in writing that they no longer apply.

Section 3: Complying with the new conditions of registration

37. Section 1 above sets out the ongoing conditions of registration that will apply once a provider is registered under the OfS's new powers. The action a provider will need to take to satisfy these conditions during the transition period is set out below.
38. If the OfS considers that a provider does not satisfy any of these ongoing conditions of registration, or considers that there is an increased risk of a breach of one or more of them, it may take action. More information about this is set out in section 8 below.

Condition C1: Guidance on consumer protection law

| | |
|--------------|---|
| Condition C1 | The provider must demonstrate that in developing and implementing its policies, procedures and terms and conditions, it has given due regard to relevant guidance about how to comply with consumer protection law. |
|--------------|---|

39. Once registered a provider will need to continue to satisfy this condition. Full guidance can be found in part V of the regulatory framework.

Condition C3: Student protection plan

| | |
|--------------|---|
| Condition C3 | <p>The provider must:</p> <ol style="list-style-type: none">i. Have in force and publish a student protection plan which has been approved by the OfS as appropriate for its assessment of the regulatory risk presented by the provider and for the risk to continuation of study of all its students.ii. Take all reasonable steps to implement the provisions of the plan if the events set out in the plan take place.iii. Inform the OfS of events, except for the closure of an individual course, that require the implementation of the provisions of the plan. |
|--------------|---|

40. As part of the registration process the OfS will approve a provider's student protection plan (SPP). Once registered the provider will need to continue to satisfy this condition. Full guidance can be found in part V of the regulatory framework.

Condition E3: Accountability

| | |
|--------------|---|
| Condition E3 | <p>The governing body of the provider must:</p> <ul style="list-style-type: none">i. Accept responsibility for the interactions between the provider and the OfS and its designated bodies.ii. Ensure the provider's compliance with all of its conditions of registration and with the OfS's accounts direction.iii. Nominate to the OfS a senior officer as the 'accountable officer' who has the responsibilities set out by the OfS for an accountable officer from time to time. |
|--------------|---|

41. This condition of registration requires a provider to comply with the OfS's accounts direction which the OfS will publish in spring 2018.
42. As part of the registration process the OfS will approve the senior officer that a provider nominates as its 'accountable officer'. This would normally be expected to be the same accountable officer as is in place under the requirements of the terms and conditions of funding. For FECs the accountable officer should be the same person as the accounting officer for ESFA purposes.
43. The OfS will publish guidance about the responsibilities of accountable officers and the action a provider must take if it needs to report any change.
44. The full guidance on this ongoing condition of registration can be found in part V of the regulatory framework.

Condition E4: Notification of changes to the Register

| | |
|--------------|--|
| Condition E4 | <p>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.</p> |
|--------------|--|

45. Following the publication of a provider's entry in the Register, it must report any change which affects the accuracy of information contained in this entry. A provider must report such changes by email to regulation@officeforstudents.org.uk.
46. Full guidance on this ongoing condition of registration can be found in part V of the regulatory framework.

Condition F3: Provision of information to the OfS

| | |
|--------------|--|
| Condition F3 | <p>For the purposes of assisting the OfS in performing any function, or exercising any power, conferred on the OfS under any legislation, the governing body of a provider must:</p> <ul style="list-style-type: none">i. 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.ii. 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 and must notify the OfS of the outcome of any independent verification at the time and in the manner and form specified.iii. 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 with the OfS or a person nominated by it. <p>The requirements in paragraphs (ii) and (iii) do not affect the generality of the requirement in paragraph (i).</p> |
|--------------|--|

- 47. Once a provider is registered it must continue to satisfy this condition. This includes reporting any of the reportable events listed in Annex E. Providers are able to do this by email to regulation@officeforstudents.org.uk.
- 48. The full guidance on this ongoing condition of registration can be found in part V of the regulatory framework.

Condition F4: Provision of information to the DDB

| | |
|--------------|--|
| Condition F4 | <p>For the purposes of the designated data body (DDB)'s duties under sections 64(1) and 65(1) of HERA, the provider must provide the DDB with such information as the DDB specifies at the time and in the manner and form specified by the DDB.</p> |
|--------------|--|

- 49. This condition of registration must be applied as soon as a provider is registered because it is listed in HERA as a mandatory condition of registration. However, the OfS does not expect to require providers to provide information to the DDB under this condition during the transition period as the OfS will not have asked the DDB to commence data collection and publication under sections 64 and 65 of HERA until it has published its data strategy later in 2018. These information requirements will commence from 1 August 2019.
- 50. During the transition period a provider will need to continue to submit data returns to HESA under the OfS's carried forward powers as set out in Annex B.
- 51. The full guidance on this ongoing condition of registration can be found in part V of the regulatory framework.

Condition Z1: Transition condition of registration

| | |
|--------------|---|
| Condition Z1 | During the transition period, the provider must comply with: <ul style="list-style-type: none">i. The terms and conditions of OfS funding.ii. The terms and conditions of Research England grant.iii. The Agreement on Institutional Designation. |
|--------------|---|

52. Section 1 sets out the regulatory requirements that a provider will need to satisfy from 1 April 2018 under the OfS's carried forward powers. Once a provider is registered under the OfS's new powers, any breach of the carried forward requirements may also constitute a breach of this ongoing condition of registration.
53. The OfS may identify an increased risk of a breach of this condition of registration through its assessment of the data returns, monitoring returns, annual accountability return and material adverse events that a provider reports under the terms and conditions of OfS funding. This may relate to risks to a provider's financial sustainability, the quality and standards of its courses, or to its management and governance arrangements. Where this is the case, the OfS may decide to impose a specific ongoing condition of registration.
54. The full guidance on this ongoing condition of registration can be found in Annex A.

Specific ongoing conditions of registration

55. A provider may have one or more specific ongoing conditions of registration imposed when it is registered. A provider will be told what it is required to do to satisfy these and will need to take action and provide any information the OfS has asked for during the transition period.

Section 4: Complying with other legal requirements

56. Providers will need to continue to comply with all of the legal obligations that they already have as these have not changed. Providers' attention is drawn to those obligations in which the OfS has a direct role, as set out below.

Registered and exempt charities

57. Charities that are registered with, and regulated by, the Charity Commission will continue to be regulated by the Charity Commission.
58. The OfS will be the principal regulator from 1 April 2018 for charities that are exempt from registration with the Charity Commission. This means that the OfS will promote compliance with charity law and may ask for information to allow it to do this. As an exempt charity, a provider will still have to comply with charity law and if the OfS has concerns that it may not be doing so, it can ask the Charity Commission to use its powers to investigate.
59. The OfS will publish its approach in separate regulatory advice.

The Prevent duty

60. From 1 April 2018, the OfS will take on responsibility as 'monitoring authority' of the 'Prevent duty' in the higher education sector as set out in the Counter Terrorism and Security Act 2015 (CTSA). Providers in receipt of funding from the OfS (and previously from HEFCE) are already subject to the Prevent duty. During the transition period, this will continue to be the case whether a provider is registered by the OfS or not. This means that any provider that is not registered but remains in receipt of OfS funding will be subject to the Prevent duty.
61. From 1 August 2019, the definition of a 'qualifying institution' that is subject to the Prevent duty (set out in section 11 of the Higher Education Act 2004) will be updated to refer to 'an institution in England which is a registered higher education provider' (as defined under section 85 of HERA). This definition will apply to all providers registered with the OfS. The Prevent duty will also continue to apply to those providers not registered with the OfS, but that have over 250 higher education students, and all the autonomous colleges, schools and halls of the universities of Cambridge, Durham and Oxford.
62. The OfS will continue to build on the Prevent monitoring framework that was established by HEFCE. Further information about reporting requirements and the action that will be taken if a provider fails to comply are set out in the Prevent monitoring framework available at www.officeforstudent.org.uk/#documents. Any potential Prevent-related serious incidents should also continue to be reported to the Prevent team.

PART B: The OfS's approach to regulation during the transition period

Section 5: Assessing compliance with the carried forward requirements

63. From 1 April 2018, the OfS will assess whether a provider:
- a) Satisfies the terms and conditions of OfS funding.
 - b) Complies with the Agreement on Institutional Designation.
64. As is does so, the OfS will also provide any information to Research England that may indicate a breach of the terms and conditions of Research England grant.
65. The OfS will do this on the basis set out in the terms and conditions of OfS funding in the following areas:
- Financial sustainability (for HEIs)
 - Management and governance (for HEIs) – this includes the regularity, propriety and value for money in relation to the use of public funding
 - Data assurance (HEIs and FECs)
 - Quality and standards (for HEIs and FECs)
 - Regulated tuition fees, access agreements and student premium funding
 - Any specific conditions of funding that have been applied to funding that the OfS or HEFCE have provided (for example capital investment funding, funding for very high costs subjects, UKRPIF funding, catalyst funding).
66. The evidence that the OfS will use for each of these is set out below.

Financial sustainability

67. The OfS will use the audited financial statements, financial and student number forecast tables and commentaries submitted in the annual accountability return to assess a provider's financial sustainability. In doing so, the OfS will construct indicators of financial viability and sustainability to inform its assessment. The OfS will consider the credibility of the provider's forecasts, particularly in respect of student number growth, and how well it has previously delivered against the forecasts submitted to HEFCE.
68. As the OfS assesses a provider's financial sustainability it will consider what it knows from the provider's commentary of its context, strategic plan and financial strategy as well as the picture presented by the financial indicators. The OfS will use this information to set the provider's

financial data in an appropriate context and to reach a rounded judgement about the risks to its financial sustainability.

Management and governance

69. The OfS will use the following parts of the annual accountability return to inform its judgement about a provider's management and governance arrangements:
- Part 1 of the annual assurance return – to provide assurance over regularity and propriety of public funding and any changes to management and governance arrangements
 - Parts of the audited financial statements, including the statement of corporate governance, statement on internal control and the external auditor's opinion – to provide assurance over:
 - Regularity and propriety of public funding
 - Appropriateness of management and governance arrangements
 - Appropriateness of arrangements for risk management and control
 - Compliance with the audit code of practice (Annex C to the Terms and conditions of funding for higher education institutions), the Higher education code of governance published by the Committee of University Chairs, and the OfS's accounts direction.
 - Annual report of the audit committee – to provide assurance over regularity and propriety of public funding and over the adequacy and effectiveness of arrangements for:
 - Risk management, control and governance
 - Economy, efficiency and effectiveness (value for money)
 - Management and quality assurance of data submitted to the Higher Education Statistics Agency, the Student Loans Company, HEFCE, the OfS, Research England and other bodies.
 - Annual report of the internal auditor – to provide assurance over the adequacy and effectiveness of arrangements for:
 - Risk management, control and governance
 - Economy, efficiency and effectiveness (value for money).
 - Report of the external auditor – to provide assurance over regularity and propriety of public funding, compliance with the OfS's accounts direction, and assurance over arrangements for risk management and control.
70. The OfS will also consider the following in reaching a judgement about a provider's management and governance arrangements:

- Report from any recent assurance review and progress against any action plan arising from that review.
- Outcomes of any reportable events that have been reported.
- Outcomes of any investigations that have arisen from public interest disclosures or other notifications to the OfS from third parties.

71. As the OfS assesses a provider's management and governance arrangements, it will consider any control weaknesses identified by auditors and/or in the statement on internal control and the audit committee's view of how these have been addressed and mitigated by the provider's management team. The OfS will pay particular attention to any high priority recommendations from the internal and external auditor and whether these raise any concerns about regulatory, propriety or value for money of the public funding that has been provided.

Data assurance

72. During the transition period, the OfS will undertake data assurance reviews on the basis of its assessment of risk. This may reflect a view of risks across the higher education sector in relation to particular data, in which case the OfS will review a random sample of providers to test the quality of the data submitted to it, or to HESA and other bodies (including returns previously made to HEFCE). The OfS may also select a provider for review if it has concerns about the quality of the provider's data, for example, based on reconciliation exercises across different data sets. If the OfS intends to visit a provider to carry out a review of one or more of its data returns, the OfS will tell the provider which data will be reviewed and when the visit will take place. A provider will need to take any actions the OfS identifies as a result of a data assurance review.
73. The OfS will also continue to monitor the implementation of any action plan a provider has in place from a previous data assurance review.
74. If the OfS identifies concerns about the integrity or the quality of a provider's data it will investigate (see Annex F).

Quality and standards

75. As part of an application for registration, a provider will need to satisfy a number of initial conditions of registration that relate to quality and standards. The outcome of the OfS's assessment of these conditions during the registration process will also constitute the quality and standards outcome for the Annual Provider Review (APR) process for that provider for 2017-18. This means that the OfS will use this outcome to determine the provider's eligibility for the Teaching Excellence and Student Outcomes Framework (TEF).
76. When the current year's data needed to construct quality and standards indicators becomes available in spring 2019, the OfS will assess a provider's position to ensure that any changes in its performance since the registration decision can be identified. The provider may be required to take action if the OfS identifies any areas that need to be addressed.
77. Throughout the transition period the OfS will monitor the progress a provider is making to implement any action plan from previous APR cycles. In addition, if the OfS becomes aware of concerns about the integrity of standards, or the quality of the academic experience it will investigate (see Annex F).

Regulated tuition fees, access agreements, student premium and disabled student premium funding

78. The OfS will assess a provider's compliance with regulated tuition fee limits including through the following mechanisms:
- Monitoring of access agreements
 - Investigations following notifications to the OfS, or arising from the OfS's analysis of student data reported to the OfS or to HESA, the ESFA or the SLC
 - Data assurance activities.
79. If a provider has an access agreement for 2017-18 or before, approved by the Director of Fair Access to Higher Education, the OfS will use the information submitted in the access agreement monitoring return to determine whether the provider has satisfied its provisions.
80. If a provider received student premium or disabled student premium funding from HEFCE in 2017-18, the OfS will use the information submitted in the student premium and disabled student premium monitoring return to confirm that the provider is appropriately using, and accounting for, this funding.
81. The OfS will publish more information in autumn 2018 about its approach to monitoring access agreements and student premium funding. It is expected that the approach to monitoring will be risk-based, in line with the OfS's wider regulatory practices.

Other funding requirements

82. The OfS will use a provider's annual accountability return to gain assurance that it has used teaching and research capital investment funding for the purposes given, and that it has maintained provision of taught programmes for those disciplines for which it has received funding for very high cost science, technology, engineering and mathematics subjects.
83. Where a provider has specific conditions attached to funding provided (for example catalyst or UKRPIF funding) the OfS will review its compliance with these conditions as set out in the award letter that was issued with the funding award.

Section 6: Actions under the carried forward requirements

84. The OfS will inform providers of the outcome of its assessment of compliance with the carried forward regulatory requirements.
85. HEIs will receive a risk letter that sets out the OfS's assessment of the provider's financial sustainability, its management and governance arrangements, and quality and standards matters. This will happen in the spring of 2019 and at any other time if the OfS considers it to be necessary. This process will run in parallel to the risk assessment process that is part of the OfS's registration process.
86. FECs will receive a quality letter that sets out the OfS's assessment of quality and standards matters. This will happen in the spring of 2019.
87. If no concerns are raised in a provider's risk or quality letter it will not need to take any action and the OfS will have minimal engagement with that provider.
88. If concerns are raised in a provider's risk or quality letter, the OfS may decide to use one or more of the interventions set out below. In very serious circumstances the OfS may also decide to use the sanctions available under its carried forward powers. These are also set out below.

Interventions

Increased engagement

89. The OfS may decide to increase its engagement with a provider if it considers there to be significant risks to the provider's financial sustainability, the quality and standards of its courses or to the other areas identified in paragraph 64. For example, the OfS may identify increasing risk from changes in student demand for a provider's courses, from its financial performance or from internal control arrangements. At such times the OfS may seek a period of 'focused dialogue' with the provider to try to ensure that it is appropriately addressing these risks.
90. The purpose of increased engagement is to understand how the provider is mitigating the risks that have been identified and ensuring that its students are protected.
91. The OfS may ask for additional information to allow it to monitor how the provider is mitigating the identified risk. This may include the provider's management accounts or student recruitment data if the risk relates to financial sustainability. The provider may be asked to meet with the OfS more frequently or provide updates about actions that it is taking. The nature of engagement with a provider will be tailored to the particular risks that have been identified.

Risk status

92. The OfS may decide to change a provider's risk status to 'at higher risk' if it considers that the provider:
 - a) Faces a threat to the sustainability of its operations, either now or in the medium term.
 - b) Has serious problems relating to value for money, propriety or regularity (that is whether funds are used for the purpose intended).

c) Has materially ineffective aspects of risk management, control or corporate governance.

93. Where this is the case, the OfS will increase its engagement with the provider to ensure that it is taking appropriate action to address the risks that have been identified.
94. Under exceptional circumstances, the OfS may require a provider to make changes as conditions of grant if it considers that risks to its funding and the interests of the provider's students and the public are not being addressed.

Investigation

95. If the OfS becomes aware of issues relating to a provider's compliance with the carried forward regulatory requirements, it may investigate. Annex F sets out the approach that will be taken to ensure that any investigation is able to explore issues and identify any actions necessary for both the carried forward powers and the OfS's new registration powers.

Action plan

96. As a result of any of these interventions, the OfS may require a provider to agree and implement an action plan. During the transition period, progress on the implementation of any action plan will be monitored.

Formal sanctions

97. There are a number of formal sanctions available to the OfS under its carried forward powers. The OfS would expect to use these only in very serious circumstances.

Access agreement

98. The OfS has powers to impose sanctions if a provider has not taken all reasonable steps to comply with the provisions in its access agreements and to uphold the commitments made in those agreements to the provider's students. The OfS can prevent a provider from charging qualifying students on qualifying courses tuition fees above the basic level by refusing to renew its access agreement. The OfS may also withhold funding or impose a fine on a provider in such circumstances.

Fee breaches

99. The Secretary of State sets a condition on OfS grant funding which means that if a provider has an agreed access agreement, the fees payable by qualifying students do not exceed the limit on fees in the access agreement for that course and for that academic year. If a provider does not have an access agreement, the fees payable by qualifying students must not exceed the 'basic amount' defined in regulations for that course and that academic year. More information about this condition is set out in the terms and conditions of OfS funding (OfS 2018.15 and OfS 2018.16). If a provider does not comply with any tuition fee limits determined by its access agreement or regulations, and charges qualifying students more than the permitted amount, the OfS can withhold teaching grant, or require the provider to repay an amount that equals 110 per cent of the amount each student on a course has been charged in excess of the relevant higher amount, multiplied by the number of students that the OfS believes to have been overcharged.
100. The OfS will retain this amount until the provider has satisfied it that reasonable efforts have been made to repay the amount overcharged to every student who was overcharged, or to the Student Loans Company on behalf of these students. Once the OfS is satisfied, the amount that was

retained (or a proportion of it) will be repaid or given to the provider as grant. The OfS may also impose a fine on a provider if it considers that this would be proportionate to the severity of the failure to comply with fee limits. If it appears to the OfS that the provider shows no intention of complying with regulated tuition fee limits, the OfS may withhold an amount up to the maximum of the total teaching funding provided to the provider.

Withdrawal of OfS and Research England funding

101. The terms and conditions of OfS funding sets out that if a provider fails to take any agreed action, the OfS will seek explanations and, if appropriate and justified, issue warnings to improve.
102. If a provider still fails to address the risks and issues it will be informed that the OfS may recover funding and deny it access to future funding, including access to specific grants or to discretionary funding. This applies both to OfS funding and Research England funding.
103. Ultimately the OfS and Research England can withdraw funding entirely, should circumstances warrant such action. This is very much a last resort and an action that would not be taken often. Actions may be taken by the OfS and Research England, individually or collectively.

Publication of a provider's risk status

104. The Terms and conditions of funding for higher education institutions sets out that if a provider fails to take any agreed action, the OfS will seek explanations and, if appropriate and justified, issue warnings to improve.
105. If the provider still fails to address the risks and issues, the OfS may make public its concerns about the provider where there are strong grounds to do so and where this is in the public or collective student interest (both current and prospective students, and past students where relevant). This is very much a last resort and an action would not be taken often.

Removal of automatic designation for student support

106. The AID says that if a provider breaches its conditions and no resolution can be reached, the OfS will explore options to remove the provider's automatic designation through the withdrawal of all of the OfS's funding. Where this is not possible, the OfS will alert the Secretary of State that the provider is no longer in compliance with the terms of this agreement, and they may introduce regulations which attach specific conditions to automatic designation for student support. This provides the Secretary of State with the power to remove automatic designation for providers not complying with conditions of designation.
107. In such circumstances none of the provider's students would be able to access student loans for tuition or maintenance. If a provider loses designation it would be expected to make arrangements to enable students to complete their courses.

Section 7: Assessing compliance with the new conditions of registration

108. From the date of a provider's registration, the OfS will assess whether it continues to satisfy the ongoing conditions of registration that apply during the transition period. The OfS will do this on the basis set out in the regulatory framework.
109. Where a condition requires a provider to provide information, for example as a reportable event, or to ensure that its entry on the Register is accurate, the OfS will decide whether that information affects the provider's registration status.
110. If the OfS imposes any specific conditions of registration it will monitor the provider's compliance with these.
111. If the OfS sees evidence that a provider has, or might, breach one or more of its conditions of registration it will investigate (see Section 8 below).
112. Where the OfS is satisfied that a breach of its carried forward regulatory requirements has occurred, it will also consider the steps it will take in response to the corresponding breach of the transition period condition of registration.

Section 8: Actions under the new conditions of registration

113. The OfS's new powers of intervention and sanction, and the factors that it will take into account as it considers using them, are set out in the regulatory framework. The powers that the OfS is able to use during the transition period are set out in this section.
114. In very serious circumstances, the OfS may decide to suspend a provider's registration or to deregister it. The use of these sanctions may affect the benefits available from the provider's registration, and to its students, from 1 August 2019.

Interventions

Enhanced engagement

115. If the OfS considers that there is an increased risk of a breach of one or more of a provider's ongoing conditions of registration, it may decide to enhance its engagement with the provider on the basis set out in the regulatory framework.
116. Where the OfS is intervening on matters relevant to both the carried forward powers and the new powers, it will ensure that its engagement with a provider and any requests additional information are aligned. The OfS will tell a provider which of its powers it is using when it asks for information and will tell the provider the purposes for which it will use the information that is provided.

Investigation

117. If the OfS becomes aware of issues relating to a provider's compliance with its ongoing conditions of registration, it may investigate. Annex F sets out the approach that the OfS will take to ensure that any investigation is able to explore issues and identify any actions necessary for both the carried forward powers and the new registration powers.
118. Annex F also sets out how the OfS will use its entry and search powers as part of an investigation where the circumstances warrant this. The OfS may only use these powers once a provider is registered and, during the transition period, only in relation to the ongoing conditions of registration that apply to the provider during this period.

Specific ongoing conditions of registration

119. The OfS may decide to apply a specific ongoing condition of registration where it considers:
- a) That there is a specific risk that is not addressed by a general ongoing condition.
 - b) To mitigate an increased risk that a provider may breach an ongoing condition of registration.
 - c) To prevent or remedy a breach of an ongoing condition of registration.
120. The approach that the OfS will take to imposing, varying or removing a specific condition of registration is set out in the regulatory framework.

Formal sanctions

121. There are a number of formal sanctions available under the new powers during the transition period. The OfS would expect to use these where there is, or has been, a breach of one or more of a provider's ongoing conditions of registration.

Refusal to agree or renew an access and participation plan

122. When a provider applies to be registered, the OfS will assess its access and participation plan (if it applies to be an Approved (fee cap) provider and to charge fees above the basic amount) and will approve the plan if it meets the OfS's requirements. If the plan does not meet the OfS's requirements the plan will not be approved. If a provider has not taken all reasonable steps to comply with the provisions in its access and participation plans and to uphold the commitments made in those plans to the provider's students, the OfS may refuse to renew a plan for a specified period of time. The OfS may also withhold funding or impose a fine in such circumstances.

123. The OfS will make these decisions on the basis set out in the guidance issued by the Director for Fair Access and Participation under section 29 of HERA (see regulatory notice 1 (OfS 2018.03) at www.officeforstudents.org.uk/#documents).

Suspension from the Register

124. The OfS may decide to suspend a provider's registration (or suspend some elements of its registration) if there is or has been a breach of one or more of its ongoing conditions of registration. The OfS will do this on the basis set out in the regulatory framework.

Deregistration

125. The OfS is able to decide to deregister a provider if there is or has been a breach of one or more of its ongoing conditions of registration. The OfS will do this on the basis set out in the regulatory framework.

PART C: Annexes

Annex A: Condition Z1: Transition ongoing condition of registration

Condition Z1: During the transition period, the provider must comply with:

- i. The terms and conditions of OfS funding.
- ii. The terms and conditions of Research England grant.
- iii. The Agreement on Institutional Designation.

Summary

Applies to: All registered providers in receipt of financial support from the OfS or from Research England under section 65 of the Further and Higher Education Act 1992.

Initial or ongoing condition: ongoing condition.

Legal basis: section 5 of HERA.

Notes

1. Section 65 of FHEA is carried forward under transition powers¹ until 31 July 2019 and allows the OfS and Research England to impose terms and conditions of funding. These are separate from, and in addition to, the conditions of registration applicable to a provider registered with the OfS.

Guidance

2. 'Terms and conditions of OfS funding' means the content of the documents identified in paragraph 9(a) above setting out the requirements placed on financial support, whether grant, loan or other payment, provided under section 65 of FHEA which may relate to the specific or general uses of this funding.
3. 'Terms and conditions of Research England grant' means the content of the document setting out the requirements placed on financial support, whether grant, loan or other payment, provided under section 65 of FHEA which may relate to the specific or general uses of this funding.
4. 'The Agreement on Institutional Designation' means the content of the document setting out the requirements placed on access to student support finance, provided under the Student Support Regulations. This is a voluntary agreement that mirrors the terms and conditions of OfS funding.
5. In judging whether a provider has complied with the terms and conditions of OfS funding, material that the OfS may consider includes:

¹ The Higher Education and Research Act 2017 (Consequential, Transitional, Transitory and Saving Provisions) Regulations 2018 (<http://www.legislation.gov.uk/uksi/2018/245/contents/made>)

- a) Any breaches of the terms and conditions applied by the OfS to the funding received by the provider.
 - b) The actions taken by the provider to ensure that terms and conditions are not breached.
6. In judging whether a provider has satisfied this condition as it relates to Research England grant, material that the OfS may consider includes:
 - a) Any breaches of the terms and conditions applied by Research England to the funding received by the provider.
 - b) The actions taken by the provider to ensure that terms and conditions are not breached.
7. In judging whether a provider has complied with the Agreement on Institutional Designation, material that the OfS may consider includes:
 - a) Any breaches of the Agreement on Institutional Designation by the provider.
 - b) The actions taken by the provider to ensure that the Agreement on Institutional Designation is not breached.

Assessment

8. If a provider fails to comply with the terms and conditions of funding provided by the OfS or by Research England, or with the Agreement on Institutional Designation, the OfS may request further information from Research England or from the provider to enable it to investigate and take appropriate action if required. The terms and conditions may include information about any actions that may be taken in response to a breach.
9. Where the OfS is satisfied that a breach of terms and conditions of funding provided by the OfS or by Research England, or of the Agreement on Institutional Designation, has occurred, it will also consider the steps it should take in response to the corresponding breach of this condition of registration. Such action may include, but not be limited to, enhanced monitoring, for example to ensure closer scrutiny of future use of financial support, or the imposition of a specific condition of registration to require specific actions to support the delivery of funded projects (such as the appointment of staff or implementation of an action plan). In cases of more serious mismanagement of financial support, the OfS may also impose a specific condition to restrict a provider's future eligibility for financial support.

Behaviours

10. The following are non-exhaustive examples of behaviours that may indicate compliance with this condition. The provider:
 - complies with any terms and conditions attached to the funding it receives
 - complies with the Agreement on Institutional Designation
 - has management and governance arrangements that are adequate and effective to ensure regularity, propriety and value for money.

11. The following are non-exhaustive examples of behaviours that may indicate non-compliance with this condition. The provider:
- fails to comply with any terms and conditions attached to the funding it receives
 - fails to comply with the Agreement on Institutional Designation
 - has management and governance arrangements that are not adequate or effective to ensure regularity, propriety and value for money.

Annex B: Data returns

1. The table below sets out the data returns that providers are required to submit during the transition period. There are different requirements for HEIs and FECs. The OfS will seek some information from the Education and Skills Funding Agency (ESFA) for FECs and sixth form colleges.
2. The middle column of the table shows whether a requirement applies to HEIs, or to FECs, or to both.

| Data return | Submission body and submission date | Further information |
|--|--|---|
| Unistats | For HEIs: submit to HESA For FECs: submit to the OfS From April 2018 onwards | The Unistats record collects information about courses that a provider will offer to its students. This helps prospective higher education students to make decisions about what and where to study. For HEIs: https://www.hesa.ac.uk/collection/c17061 For FECs: http://www.hefce.ac.uk/lt/unikis/FECdata/ |
| Destination of Leavers from Higher Education (2016-17) | For HEIs: submit to HESA For FECs: submit to the OfS 9 May 2018 | This is a survey of the destinations of those students who qualified in 2016-17 and providers will need to submit data that they have already collected to HESA or to the OfS as indicated in the previous column. HEIs: https://www.hesa.ac.uk/collection/c16018/data_collection_schedule FECs: http://www.hefce.ac.uk/lt/dlhe/ |
| Provider profile | For HEIs: submit to HESA 16 June 2018 | This provider profile collects information about the location of campuses and of the internal organisation of providers. This data is used to understand where provision is delivered and how providers' internal structures map to the standard cost centres used to report student, finance and staff data. https://www.hesa.ac.uk/collection/c17041 |
| Graduate Outcomes Survey | For HEIs: submit to HESA For FECs: submit to the OfS | This survey is replacing the Destinations of Leavers from Higher Education survey. Providers will need to provide HESA or OfS with the contact details of their students who have completed their studies, who will then be surveyed by a contractor. |

| | | |
|---|--|--|
| | First submission September 2018 | https://www.hesa.ac.uk/collection/c17071/data_collection_schedule |
| Student return | For HEIs: submit to HESA Final submission October 2018 | The student return is an individualised student data return that provides information about individual students. https://www.hesa.ac.uk/collection/c17051 |
| Medical and dental survey | For HEIs with medical schools: submit to OfS Early October 2018 | This survey collects data on the intake of medical and dental students in the 2017-18 and 2018-19 academic years. Data from this survey is used by the OfS, the Department of Health and Social Care (DHSC) and Health Education England (HEE) as an early indicator of medical and dental intakes, to inform DHSC and HEE workforce planning. This data will also be used to monitor the medical and dental intake targets and to inform funding allocations. Guidance will be issued in the summer about the submission requirements. |
| Individual Learner Record (ILR) | For FECs: submit to the ESFA 18 October 2018 | The Individual Learner Record submission to the ESFA provides information about individual students. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/624336/ILRSpecification_2017_18_Appendix_A_Jul2017_v1.pdf |
| Staff record | For HEIs: submit to HESA 10 November 2018 | The staff record collects details of staff employed by each provider. It is used by the OfS and by Research England to understand the academic workforce and assess equality and diversity issues in the wider HE workforce. https://www.hesa.ac.uk/collection/c17025/ |
| Higher Education in Further Education Survey (HEIFES) | For FECs: submit to the OfS Mid-November 2018 | This data is used to gain an early indication of the number of higher education students studying in the 2018-19 academic year and to inform the allocation of teaching funding for the following year. Guidance will be issued in the summer about the submission requirements |

| | | |
|--|--|--|
| Aggregate offshore record | For HEIs: submit to HESA 17 November 2018 | The aggregate offshore record collects information about the number of students studying overseas who are either registered with a provider or studying towards its awards. This data is used to understand the extent and nature of activities outside England. https://www.hesa.ac.uk/collection/c17052 |
| National Student Survey | For all providers: submit to Ipsos November 2018 - April 2019 | The National Student Survey provides information about student satisfaction of undergraduate students who are studying in the final year of their courses, where the course is longer than one year of full-time equivalent study. The data will be collected by contractors working on behalf of the OfS and other stakeholders. Providers will be expected to provide contact details for students who will be surveyed. The next survey period is January to April 2019. http://www.thestudentsurvey.com/institutions.php |
| Finance Record | For HEIs: submit to HESA 3 December 2018 | The HESA finance record collects summary financial information primarily drawn from providers' audited financial statements together with more detailed breakdowns of some of these figures. This data will be used to monitor a provider's, and the sector's, financial health and by Research England to allocate funding. Guidance will be issued in the summer about the submission requirements. |
| Higher Education Early Statistics Survey (HESES) | For HEIs: submit to the OfS Early December 2018 | This data is used to gain an early indication of the number of higher education students studying in the 2018-19 academic year and to inform the allocation of teaching funding for the following year. Guidance will be issued in the summer about the submission requirements. |
| Higher Education - Business and Community Interaction (HE-BCI) | For HEIs: submit to HESA Late January 2019 | The HE-BCI record is the main vehicle for measuring the volume and direction of interactions between providers and business and the wider community. The record will be used by Research England to allocate funding. https://www.hesa.ac.uk/collection/c16032 , updated guidance will be issued by HESA in due course |

| | | |
|---------------------------|---|--|
| Estates management record | For HEIs: submit to HESA Late March 2019 | This record collects information about providers' estate, carbon emissions and waste. This data is used to assess the state of a provider's estate and the amount of carbon and waste generated. https://www.hesa.ac.uk/collection/c16042 , updated guidance will be issued by HESA. |
|---------------------------|---|--|

Annex C: Monitoring returns

National collaborative outreach programme (NCOP)

1. The National Collaborative Outreach Programme (NCOP) is funding 29 consortia to undertake sustained and progressive outreach in identified geographical areas, to support the most disadvantaged young people in England to progress into higher education.
2. The lead provider for each NCOP consortium will need to submit a monitoring return. Monitoring will take place on a biannual basis in the form of a summer return (covering the period from January to July 2018) and a winter return (covering the period from August to December 2018)
3. Guidance will be issued for each return as necessary.

Access agreements in 2017-18 and 2018-19

4. If a provider has an access agreement for 2017-18 or 2018-19 approved by the Director of Fair Access to Higher Education, it will need to submit a monitoring return in mid-January 2019. This will allow the OfS to assess the extent to which the provider has have met the obligations set out in its access agreement, and the progress it has made against its milestones and targets. Further guidance will be published about this monitoring return in autumn 2018.
5. For FECs with access agreements for 2017-18 and/or 2018-19 the monitoring process is expected to be broadly similar to the arrangements in 2016-17.
6. HEIs will be asked to report expenditure on access measures in the financial tables in their access agreements, student premium and disabled student premium monitoring return. This will include expenditure in relation to their access agreements. Providers will need to report separately on their progress against targets, and their approach to evaluation.

Student premium and disabled student premium funding

7. Providers that received student premium or disabled student premium funding from HEFCE in 2017-18 will need to submit an access agreements, student premium and disabled student premium monitoring return in mid-January 2019. This will allow the OfS to confirm that a provider is appropriately using, and accounting for, this funding.
8. For FECs that received HEFCE funding or is receiving OfS funding for the student premium and disabled student premium in 2017-18 or 2018-19, the monitoring process will be broadly similar to the arrangements in 2016-17.
9. HEIs will be asked to report expenditure on access measures in the financial tables in their access agreements, student premium and disabled student premium monitoring return. This will include expenditure in relation to their OfS and HEFCE funding for the student premium and disabled student premium. Providers will need to report to the OfS separately on their progress against targets, and their approach to evaluation.
10. Providers that do not have an access agreement in 2017-18 or 2018-19 will need to submit information if they:
 - received funding from the OfS and/or HEFCE to support successful student outcomes through the student premium and the disabled student premium, and
 - had more than 100 FTE directly funded student numbers.

11. The information for submission will be similar to that in the 2016-17 monitoring return.

Capital investment funding

12. If a provider received capital investment funding from HEFCE in 2017-18 or from the OfS in 2017-18 or 2018-19, it will need to provide information to the OfS in February 2019 about how much of the allocated capital funding it has spent for the previous financial year. Any unspent funding may need to be returned.
13. The OfS will issue guidance in early 2019 about the submission requirements.

Other funding requirements

14. If a provider has received other funding from the OfS in 2017-18 or 2018-19, or from HEFCE in the 2017-18 academic year, that has specific conditions attached to it, the provider will need to submit information to allow the OfS to determine whether it has complied with these conditions.

Annex D: Annual accountability return for HEIs

1. The OfS will assess accountability for public funding and compliance with the Terms and conditions of funding for higher education institutions using the information set out below.
2. FECs do not need to submit an annual accountability return as the ESFA will provide assurance to the OfS about their financial sustainability and financial controls.
3. The OfS will publish further information in summer 2018 about each of the elements of the annual accountability return and how and when they should be submitted.

| Element of annual accountability return | Approval level | Deadline |
|---|---|---|
| Financial and student number forecast tables and supporting commentary | Governing body | September 2018, exact date will be published in spring 2018 |
| Annual Assurance Return | Accountable officer | 3 December 2018 |
| Signed audited financial statements for 2017-18 | Governing body | |
| Audit Committee's annual report for 2017-18 | Governing body | |
| Internal auditor's annual report for 2017-18 | Reported to Audit Committee | |
| External auditor's management letter and the provider's management response to this for 2017-18 | Reported to Audit Committee | |
| Financial commentary | Governing body | |
| Value for money return | Governing body | |
| Transparent Approach to Costing (TRAC) return for 2017-18 | Independent committee of the governing body | |
| Transparent Approach to Costing for Teaching (TRAC(T)) return for 2017-18 | Independent committee of the governing body | 28 February 2019 |

4. The annual assurance return is an assurance statement from a provider's accountable officer that the provider has complied with the Terms and conditions of funding for higher education institutions and that, if it is an exempt charity, it has complied with its charity law obligations.
5. Annual financial statements must be prepared and audited in accordance with the requirements set out in the Terms and conditions of funding for higher education institutions.

6. The financial and student number forecast tables provide historic and forecast information about student numbers and financial performance and position. This allows the OfS to assess a provider's financial sustainability and make a judgement about its financial risks. During the transition period, a provider will need to provide student numbers, staff numbers and financial data for the most recently completed academic year (1 August 2017 to 31 July 18) and forecast data for the current academic year (2018-19) and four subsequent years (to 2022-23). This will allow the OfS to collect the data needed to construct the lead indicators that it will use to monitor compliance with the ongoing conditions of registration. This return is called the 'forecast tables' and should be submitted in September 2018, rather than in July as has been the case in recent years.
7. Providers must submit a financial return to HESA in December 2018. The OfS will publish guidance and a template for the financial return in summer 2018. The financial return reports a provider's actual results for the financial year that ended four months previously. The following changes will be made to the financial return that providers will need to make in 2018:
 - The OfS will request information on senior staff remuneration. Providers will need to publish this information in their audited financial statements, but will also need to include this information in their financial return in December 2018 to aid analysis and reporting.
 - The OfS may request additional information in the financial return to allow it to assess a provider's expenditure on access and participation measures. This would bring together in one place the financial information providers have previously submitted in relation to their access agreement and student premium funding, and would be designed to reduce the reporting burden as some financial data was previously included in both returns. If the OfS collects this data in this way, providers will not need to submit the financial tables that are included in the access agreement monitoring set out in the previous Annex.
8. A provider will also need to submit a commentary to accompany its financial return. The commentary will need to include the following:
 - Explanation(s) of any material variances between the 2017-18 audited performance and position relative to that submitted in the forecasts submitted in September 2018.
 - Information about any emerging risks (including changes to the forecasts) that may impact on the provider's current or future financial sustainability or both.
9. Providers will need to submit TRAC and TRAC(T) returns that have been appropriately reviewed and approved. The OfS will provide further guidance about this in September 2018.
10. Providers will need to submit a value for money return. The OfS will provide further guidance about this in September 2018.
11. The other returns that a provider must submit are set out in the table above. Further information about these are set out in the Terms and conditions of funding for higher education institutions.

Annex E: Reportable events

1. A reportable event is any event or circumstance that, in the judgement of OfS, materially affects or could materially affect the provider's legal form or business model, and/or its willingness or ability to comply with its conditions of registration. Reportable events must be reported to the OfS under condition F3(i) and include, but are not limited to:

- **A change in the provider's circumstances**, including but not limited to:
 - a sale of either the provider itself, a part of it, or its parent
 - a merger of the provider with another entity
 - an acquisition by the provider of another entity
 - a material change in the provider's business model, such as a move to focus on further instead of higher education
 - a change in the provider's legal status
 - other, similar structural changes, such as the establishment of joint ventures, or the separation of the provider into multiple entities
 - other changes resulting in a change of ownership of the provider.
- **A change of ownership.** The OfS is principally, but not exclusively, concerned with situations where 50 per cent or more in the shareholding of the registered provider (or the closest equivalent, where the provider is not limited by shares) are, or may be, in common ownership. Common ownership includes:
 - ownership by the same person or entity
 - ownership by multiple entities themselves under common ownership or control
 - ownership by multiple individuals or entities who by agreement or practice exercise their ownership rights in a co-ordinated way (and without restricting the scope of the OfS's understanding of what constitutes common ownership, it will deem people who are 'connected' to be exercising their ownership rights in a co-ordinated way)
 - ownership by multiple individuals or entities on behalf of, or acting under the direction or in the interests of, the same third party, including a case where ownerships are held on trust for a common beneficiary, and
 - any similar structure.

Ownership does not require beneficial ownership. A provider:

- must inform the OfS of any changes in ownership where 50 per cent or more of the ownership of the registered provider is in common ownership, and a change affects the majority ownership rights. This includes the creation of majority ownership rights for the first time, the

transfer of majority ownership rights to a new holder, the introduction of a new entity to majority ownership rights and majority ownership rights coming to an end

- must inform the OfS about any change in ownership that affects 15 per cent by value or voting rights of the registered provider's shares, or closest equivalent. A provider must do so whether the change is brought about in one transaction or a series of connected transactions. A provider does not need to inform the OfS of entirely unconnected transactions provided none of those transactions is individually above the notification threshold
- is not required to inform the OfS of changes in ownership where 50 per cent or more of the ownership of the registered provider is in common ownership, and the changes only affect less than 15 per cent by value or voting rights of the minority ownership rights.

Some examples of changes that must be reported include:

- where all or any part of the majority ownership rights in the provider change:
 - Example 1: there are five shareholders, each holding 10 per cent of the shares in a provider. They are business partners and act in a co-ordinated way. One shareholder sells their shareholding to the others. This must be notified.
 - Example 2: there are three shareholders, each holding 20 per cent of the shares in a provider. They are business partners and act in a co-ordinated way. One sells a 10 per cent shareholding to a relative who is a connected person. This must be notified.
 - Example 3 There are three shareholders, each holding 20 per cent of the shares in a provider. They are business partners and act in a co-ordinated way. One sells their shareholding to a third party. This must be notified.
 - where additional share capital is issued, or shares are bought back, or the voting rights that attach to existing shares are changed
 - where a controlling proportion of a provider's shares is directly, or indirectly (such as through those of its parent organisation(s)), acquired by another individual(s), partnership(s) or organisation(s).
- **A change of control.** 'Control' has the meaning given by section 1124 of the Corporation Tax Act 2010, and 'change of control' means a change in control so defined. Where two or more entities or individuals, by agreement or practice, exercise their rights in a co-ordinated way, with the result that they together have control so defined, each will be treated as having control of the provider. A provider is required to notify the OfS of any change in the individual(s) or entity/ies who have control of the provider.
 - The provider becoming aware of suspected or actual fraud or financial irregularity.
 - The provider becoming aware of court or legal action.
 - The provider resolving to cease to provide higher education.

- Regulatory investigation and/or sanction by other regulators, e.g. Charity Commission, Home Office.
- Loss of accreditation by a Professional, Statutory or Regulatory Body (PSRB).
- Any new partnerships, including validation or sub-contractual arrangements.
- Opening a new campus.
- Intended campus, department, subject or provider closure.
- Any other material events with possible financial viability or sustainability implications, including but not limited to:
 - a material change in actual or forecast financial performance and/or position
 - a material change in gearing
 - a material change in student numbers that was not included in the provider's financial forecasts
 - for a provider with a legally binding obligation of financial support underpinning its financial sustainability, a withdrawal of the obligation (including as a result of a change of control, even where the new owner will offer a similar obligation) or a material adverse change in the counterparty's financial position or other standing that could affect its suitability as counterparty
 - the sale of significant assets
 - significant redundancy programmes.

This is not intended to be an exhaustive list and it may be revised periodically to ensure it captures the relevant reportable events.

Annex F: Investigations

1. The OfS may investigate if it has concerns about:
 - a) A provider's compliance with the terms and conditions of OfS funding.
 - b) The integrity of standards, or the quality of the student academic experience (issues that were previously considered under HEFCE's Unsatisfactory Quality Scheme).
 - c) A provider's compliance with the general ongoing conditions of registration that apply during the transition period.
 - d) A provider's compliance with any specific condition of registration that apply during the transition period.
 - e) Matters related to the OfS's monitoring duty under 'Prevent'.
2. The OfS may also investigate if students or others raise concerns with it about any of the areas listed in paragraph 1.
3. Such concerns may be reported directly to the OfS through its notifications and whistleblowing procedure by stakeholders including governing body members, staff, students, external examiners, Professional, Statutory and Regulatory Bodies² (PSRBs), the Office of the Independent Adjudicator (OIA), student representative bodies, and others. This reporting process is not intended to interfere with the ongoing work of the OIA in relation to cases brought by individual students.
4. Where there is sufficient evidence of a serious problem to require further investigation and possible action, the scale and nature of the OfS's intervention will be proportionate to the potential significance of the problem and the risk it represents to students. In investigating, the OfS may:
 - Work with its partner organisations to ensure a joined-up approach to any investigation – this may include the Student Loan Company, the ESFA and others, depending on the nature of the concerns and the most appropriate approach to understand and address them.
 - Undertake, or commission the QAA to undertake, a tailored review visit where the concerns relate to quality or standards.
 - Undertake, or commission, a review of the provider's management and governance arrangements or any other aspect as necessary to enable the OfS to understand and address any potential issues.
5. If it is necessary to investigate a concern, the OfS will write to the provider to explain the issues and the steps it intends to take. The provider will need to provide whatever the OfS reasonably requires to enable it to complete its investigation. This may include access to people, records, data and information on the provider's premises and/or in its possession, custody or control. The OfS will provide an opportunity for the provider to consider and comment on the evidence and

² PRSBs are organisations which are authorised to accredit, approve or recognise specific programmes in the context of the requirements of the PSRB.

investigation before taking a final decision, except where the OfS decides that it is necessary to suspend the provider's registration (see section 8 above).

6. The OfS will write to the provider with the outcome of an investigation regardless of whether it plans to change an aspect of the provider's registration or vary or impose any specific ongoing registration conditions as a result of the investigation.
7. The OfS will publish further guidance about the notifications and whistleblowing procedure.

Entry and search

8. HERA gives the OfS – in certain limited circumstances – the powers of entry and search to a provider's main premises as well as premises used by an institution linked to the provider. This power comes into effect from 1 April 2018, but can only be used in relation to a registered provider.
9. The OfS will use its power of entry and search only in exceptional circumstances, and where its usual methods of investigation would not be effective. There are two main categories of 'exceptional circumstance':
 - a) Where the OfS believes that a provider would destroy or interfere with relevant information if it is requested in the usual way, such as if the OfS had reason to believe that there was fraud or misuse of public funds that involved a provider's accountable officer.
 - b) Where a provider has not complied with prior requests for relevant information or co-operation.
10. To exercise its power of entry and search, the OfS must first seek and obtain a magistrate's warrant and, before granting the warrant, the magistrate must be satisfied that four tests have been met:
 - a) There are reasonable grounds for suspecting that the provider has breached a condition of registration or of funding.
 - b) The suspected breach is sufficiently serious to justify entering the provider's premises.
 - c) Entry to the provider's premises is necessary to determine whether the suspected breach is taking place, or has taken place.
 - d) The provider has refused, or is likely to refuse, entry to its premises; or requesting entry may frustrate or seriously prejudice the purpose of entry.
11. If the OfS enters and searches a provider's premises or those used by an institution linked to the provider, it may be accompanied by the police, and the search warrant will state, so far as is possible, which condition(s) of registration or of funding the OfS suspects the provider of breaching. During the search, the OfS may copy documents and/or seize and retain items that it reasonably believes are evidence of this breach.



© The Office for Students copyright 2018

This publication is available under the Open Government Licence 3.0.

www.nationalarchives.gov.uk/doc/open-government-licence/version/3/