

**Consultation**

**Office for  
Students**

The logo for the Office for Students, featuring a dark blue square with a yellow triangle in the top right corner, and the letters 'OfS' in white inside the yellow triangle.

**OfS**

# **Part 3: Proposals for changes to registration application requirements**

This consultation runs from **6 February 2025**  
to **23 April 2025**.

**Reference** OfS 2025.06

**Enquiries to** [regulation@officeforstudents.org.uk](mailto:regulation@officeforstudents.org.uk)

**Publication date** 6 February 2025

# Contents

<b>Introduction .....</b>	<b>4</b>
What we are consulting on.....	4
Why we are focusing our attention in these areas .....	4
Summary of the proposals .....	5
How we would implement the proposals.....	6
<b>Proposal 1: To determine requirements for registration applications under section 3(5) of HERA.....</b>	<b>7</b>
What we are proposing .....	7
Why we are making these proposals .....	7
Details of the proposal .....	8
Alternative options considered .....	12
<b>Proposal 2: Information about financial viability and sustainability and corporate structure .....</b>	<b>15</b>
What we are proposing .....	15
<b>Proposal 2a: Financial scenario planning with commentary and mitigation plans.....</b>	<b>15</b>
What we are proposing .....	15
Why we are making this proposal .....	15
Details of the proposal .....	18
Alternative options considered .....	23
<b>Proposal 2b: Requiring updated financial and student numbers tables with commentary towards the end of a registration assessment.....</b>	<b>24</b>
What we are proposing .....	24
Why we are making this proposal .....	24
Details of the proposal .....	25
Alternative options considered .....	26
<b>Proposal 2c: Requiring audited financial statements during the registration application ....</b>	<b>27</b>
What we are proposing .....	27
Why we are making this proposal .....	27
Details of the proposal .....	27
Alternative options considered .....	29
<b>Proposal 2d: Diagram showing corporate structure and ownership.....</b>	<b>30</b>
What we are proposing .....	30
Why we are making this proposal .....	30
Details of the proposal .....	31
Alternative options considered .....	33
<b>Proposal 3: Submitting information about historical and current investigations .....</b>	<b>34</b>
What we are proposing .....	34
Why we are making this proposal .....	34
Details of the proposal .....	35
Alternative options considered .....	40
<b>Proposal 4: Reporting specified matters that affect an application to register .....</b>	<b>41</b>
What we are proposing .....	41
Why we are making this proposal .....	41
Details of the proposal .....	42
Alternative options considered .....	47

<b>Proposal 5: Fixed-term resubmission restriction for registration refusals</b> .....	<b>48</b>
What we are proposing .....	48
Why we are making this proposal .....	48
Details of the proposal .....	49
Alternative options considered .....	52
<b>Impact of proposals on registration assessment processes and timelines</b> .....	<b>54</b>
Other questions about this consultation .....	56
<b>Annex A: Proposed notice under section 3(5) of HERA</b> .....	<b>57</b>
Schedule 1 Part A .....	59
Schedule 1 Part B .....	72
Appendix 1 of Annex A: Initial condition C5 declaration form .....	75
Appendix 2 of Annex A: Initial condition C5 checklist .....	76
Appendix 3 of Annex A: Fraud and public funding declaration .....	80
Appendix 4 of Annex A: Investigations declaration form.....	81
<b>Annex B: Comparison of current and proposed submission requirements</b> .....	<b>85</b>
<b>Annex C: Alternative options considered</b> .....	<b>94</b>
Proposal 1: To determine requirements for registration applications under section 3(5) of HERA .....	94
Proposal 2a: Additional financial scenario planning, commentary and mitigation plans .....	94
Proposal 2b: Updated financial and student number tables and commentary .....	94
Proposal 2c: Audited financial statements for any financial years that are completed after registration application submission within 9 months .....	95
Proposal 2d: Diagram showing corporate structure and ownership .....	96
Proposal 3: Historical and current investigations .....	96
Proposal 4: Reporting specified matters that affect an application to register .....	98
Proposal 5: Fixed-term resubmission restriction for registration refusals .....	99
<b>Annex D: List of consultation questions</b> .....	<b>102</b>

## Documents referred to in this consultation

In this consultation we refer to the following documents:

**Regulatory framework for higher education in England**. This publication sets out the OfS's approach to regulation of English higher education providers.

**Consultation on OfS strategy for 2025 to 2030**. This consultation on the OfS's strategy for 2025 to 2030 runs from 12 December 2024 to 20 February 2025.

**Regulatory advice 3: Registration of English higher education providers with the OfS**. This regulatory advice sets out guidance for providers of higher education in England that want to apply to register with the OfS.

**Guidance for providers about the financial information to submit with a registration application and Template for financial and student number tables** (available alongside Regulatory advice 3). These documents explain what financial information must be submitted as part of an application to register with the OfS.

**Regulatory advice 14: Guidance for providers for the Annual Financial Return**. This regulatory advice sets out guidance about the information that a provider is required to submit as part of its financial monitoring returns to the OfS.

**Regulatory advice 16: Reportable events**. This document provides guidance for registered providers about the events or matters they are required to report to the OfS.

**Regulatory advice 21: Publication of information**. This regulatory advice sets out guidance for higher education providers in England on the approach we will take to the publication of information about providers.

**Financial sustainability of higher education providers in England: 2024**. This report, published in May 2024, sets out our impartial, independent view of the financial condition of the higher education sector and its resilience to financial challenge.

**Financial sustainability of higher education providers in England: November 2024 update**. This report provides an update on the financial sustainability of higher education institutions, six months on from the annual report the OfS published in May 2024.

**Regulatory notice 1: Access and participation plan guidance**. This regulatory notice sets out guidance for higher education providers in England on the preparation of an access and participation plan.

# Introduction

## What we are consulting on

1. We are consulting on changes to the requirements for a registration application to support the aims we have set out in this consultation.
2. These changes include making a decision to determine the requirements for a registration application by issuing a notice under section 3(5) of the Higher Education and Research Act 2017 (HERA). This notice would set out new requirements for a registration application, including new information that a provider would need to submit as part of its registration application or during our assessment. The notice would supersede the existing registration guidance<sup>1</sup> although we would publish updated guidance to sit alongside it.

## Why we are focusing our attention in these areas

3. Registration with the Office for Students (OfS) is an important part of the overall regulatory framework and the arrangements in place to ensure that students receive a high quality education and that students and taxpayers receive value for money. It unlocks significant benefits for providers, including access to public funding. It is therefore very important that only well-prepared, high quality and innovative providers are able to register and that such providers can register without undue burden or delay.
4. We think that more providers are likely to seek to apply for registration in the future due to the introduction of the Lifelong Learning Entitlement (LLE) and the government's proposals to require some providers delivering higher education within subcontractual partnerships to register with the OfS. We therefore also need to ensure our registration processes are as efficient as possible and enable high quality and innovative providers to enter the regulated sector smoothly.
5. Our experience of registration to date has demonstrated that many providers applying for registration invest considerable time, effort and resource in researching and understanding the regulatory environment for higher education in England and the OfS's regulatory framework, and prepare carefully to meet the submission requirements so that their registration application is as straightforward as possible. However, we also receive registration applications that are under-prepared and missing key information. This can mean the application process becomes resource intensive for both the provider and the OfS.
6. We encounter the following issues during the registration assessment process that reduce the efficiency with which we can conduct assessments:
  - a. Failure to submit a complete application, or an application of sufficient quality, in some cases due to a general failure to engage with the guidance available.
  - b. Failure to provide additional or updated information later in the process in a timely manner. This can lead to considerable delays in completing the assessment of a registration application.

---

<sup>1</sup> See [Regulatory advice 3: Registration of English higher education providers with the OfS](#).

- c. Non-reporting, or late reporting, of matters that arise that could materially affect our assessment.
  - d. Following closure of a provider's application, the provider immediately resubmitting the same or a very similar application without having addressed the weaknesses in the original application.
7. These issues are currently occurring too frequently. Around 40 per cent of registration applications do not contain the information set out in our registration guidance when they are initially submitted. We think changes to the registration process are needed to enable and incentivise providers to submit high quality registration applications.
  8. As we describe in the introduction to this consultation, the financial challenges facing the sector have increased. It is important that we are taking this into account when assessing a provider's financial sustainability at registration. As a result, we have been routinely asking providers for specific information about financial risk during the registration process. We think that setting this out clearly in our registration processes will help providers to prepare for registration and improve overall efficiency.
  9. Finally, the proposals set out in Parts 1 and 2 of this consultation, would result in changes to the information that would be required at registration if implemented.

## **Summary of the proposals**

10. We are proposing changes to make a decision under section 3(5) of HERA to prescribe requirements for registration applications. This would include specifying the information that must be provided as part of an application. We are also proposing to prevent a provider from reapplying for registration for a minimum period after refusal of a previous application. This would enable a provider to make changes and improvements to its application. These proposals are intended to provide greater certainty for applicants about what is expected and enable them to submit complete applications. We think these proposals would also enable us to refuse more easily applications that are not complete, increasing the efficiency of our registration processes and ensuring that we can use our resources to focus on well-prepared applications.
11. We are also proposing to require more up front information about a provider's financial readiness to reflect the increased challenges the sector is facing. This will help providers to be ready and make the process more efficient.
12. For completeness, we have also shown the changes that would need to be made to registration processes if we decided to implement the proposed new initial conditions C5 and E7 (see Parts 2 and 3 of this consultation). We are consulting on these information requirements alongside the conditions themselves which are explained in Parts 1 and 2 of this consultation.
13. We are not proposing to make any changes to the assessment stages and sequence of the registration process.
14. We have included, as Annex C, alternative options we have considered. We welcome views on these alternatives alongside comments on our proposals. The overarching introduction to

the consultation (Annex B: Matters to which we have had regard in reaching our proposals) sets out the matters to which we have had regard in formulating these proposals.<sup>2</sup>

<b>Proposal 1</b>	<b>to issue a decision under section 3(5) of HERA<sup>3</sup>, which would establish certain requirements for an application for OfS registration</b>
<b>Proposal 2</b>	<b>to introduce new information submission requirements relating to a provider's financial viability and sustainability and corporate structure and ownership</b>
<b>Proposal 3</b>	<b>to introduce a requirement to submit information about historical or current investigations</b>
<b>Proposal 4</b>	<b>to introduce a requirement to report to the OfS specified matters that may affect a provider's application to register</b>
<b>Proposal 5</b>	<b>to introduce a fixed-term resubmission restriction for a provider that receives a final decision to refuse registration</b>

## **How we would implement the proposals**

15. This consultation will close on 23 April 2025. The introduction to the consultation sets out how we would implement these proposals, including a proposed timetable.<sup>4</sup>

---

<sup>2</sup> See [Introduction to the consultation on new registration conditions](#).

<sup>3</sup> See [Higher Education and Research Act 2017](#).

<sup>4</sup> See: [Proposal: how we would implement these proposals in this consultation](#).

# Proposal 1: To determine requirements for registration applications under section 3(5) of HERA

## What we are proposing

We propose to issue a decision under section 3(5) of HERA,<sup>5</sup> which would establish certain requirements for an application for OfS registration. These requirements would include:

- proposed documentation and information to be submitted as part of a provider's initial application for registration, and during the course of the registration process. Where we propose new submission requirements that are in addition to those set out in our existing registration guidance these are explained in detail in Proposals 2 and 3 and in the proposals for new initial conditions C5 and E7. The proposed notice that would contain all requirements is attached as Annex A.
- a proposed list of matters that a provider must report to the OfS during the registration process to ensure that the information submitted remains materially up to date. The detailed proposed requirements are set out in Proposal 4.

## Why we are making these proposals

16. We frequently receive registration applications that do not contain all the information we need and that do not follow the registration guidance. This results in inefficient use of OfS resources and those of the provider concerned, as we need to engage with each other, sometimes repeatedly. This creates knock-on delays to our assessment of well-prepared and complete applications that are subsequently submitted.
17. The objectives of this proposal are:
  - a. To set out the requirements for a provider's initial submission of its registration application in one place to support providers to prepare applications correctly.
  - b. To set out the submission requirements associated with proposed new initial conditions C5 and E7.
  - c. To set out, as far as possible, the information we are likely to need during our assessment of a provider's registration application, not just in its initial submission, to reduce the amount of clarification and further information needed during our assessment and so reduce avoidable delays.
  - d. To enable the OfS to quickly and efficiently reject registration applications that do not contain all the information required to enable us to assess whether a provider meets the

---

<sup>5</sup> See [Higher Education and Research Act 2017](#).

eligibility requirements and initial conditions of registration, driving up standards of applications.

- e. To prioritise our resources on those providers that submit applications that fulfil our information submission requirements and minimise the amount of time we spend on those that do not.
18. To achieve these objectives, we propose to introduce requirements under section 3(5) of HERA to ensure that all registration applications include the information the OfS needs to make a decision on registration.
19. Section 3(5) of HERA<sup>6</sup> grants the OfS the authority to determine the form of an application for registration, the information to be contained in it or provided with it, and the manner in which an application for registration may be submitted.
20. Under the proposed requirements, we could reject incomplete applications, streamlining the process and reducing the need for extensive back-and-forth with a provider. If deficiencies are not addressed within a defined timeframe, an application could be swiftly rejected. This approach would provide a clear and unambiguous signal to providers to ensure that they are prepared before submitting an application.
21. We think that by efficiently rejecting applications that do not meet the registration requirements, we can focus our efforts on assessing applications from providers that have been well prepared and contain the required information.
22. We think that the approach we have set out in Proposal 1 will support us to achieve our objectives. However, we think that this proposal would need to work in conjunction with some of the other proposals in Part 3 of this consultation to be fully effective. The proposed restriction on the resubmission of a registration application if a provider has received a final decision to refuse its application (Proposal 5) would, together with Proposal 1, provide an even stronger incentive for a provider to engage carefully with registration requirements and consider its readiness to submit a registration application.

## **Details of the proposal**

23. We propose that the requirements for a registration application would be set out in a notice under section 3(5) of HERA that specifies the manner and form of a provider's application for registration and the information to be contained in or provided with it. This would include:
  - a. A full list of the documentation and information to be submitted as part of a provider's initial application for registration and during the course of the registration process.
  - b. A list of matters that a provider must report during the registration process in order to ensure that the information submitted remains materially up to date.

---

<sup>6</sup> See [Higher Education and Research Act 2017](#).

24. The notice would also include a requirement that the information contained in a provider's registration application, or provided with it, must be accurate. We clarify how we would treat applications containing inaccurate information in the blue box at paragraph 31.
25. The proposed section 3(5) Notice is set out in **Annex A** of this document (Part 3 of the consultation). The requirements of the proposed notice are explained in detail together with the alternative options considered in Proposals 2, 3 and 4. This notice also includes the proposed submission requirements for proposed new initial conditions C5 and E7. The requirements themselves are explained in the consultations about the initial conditions (Part 1 for C5 and Part 2 for E7).
26. **Annex B** of this document (Part 3 of the consultation) includes a table explaining which of the proposed elements of the section 3(5) Notice align with existing OfS registration guidance (Regulatory advice 3)<sup>7</sup> and which elements are different, including where we propose to require new information.
27. We propose that the section 3(5) Notice, if adopted, would apply to any new application for registration made after publication of our decisions following this consultation.
28. We propose that it would not apply to an application from a registered provider to change its category of registration. For applications to change category of registration, we propose that we would issue a bespoke section 3(5) Notice setting out the information we required that provider to submit according to its circumstances. In general, we require a provider that is already registered with the OfS to submit less information for this type of registration application, because we already hold regulatory information about that provider through routine monitoring. For example, the OfS will already hold audited financial statements for any provider that has complied with the requirements of the OfS's Annual Financial Return<sup>8</sup> within the past year, so a provider would not have to resubmit these statements.
29. A registered provider seeking to change registration category would still be able to refer to the general section 3(5) Notice to understand the maximum information likely to be required for any application.
30. More information about how we would implement these proposals can be found in the proposal 'How we would implement the proposals in this consultation'<sup>9</sup> in the introduction to this consultation.
31. We have outlined in the box below how we propose the section 3(5) Notice would operate in practice:

### How would the section 3(5) Notice operate in practice?

If we were to decide to implement the proposed notice, the registration application process would operate as follows:

<sup>7</sup> See [Regulatory advice 3: Registration of English higher education providers with the OfS](#).

<sup>8</sup> See [Regulatory advice 14: Guidance for providers for the Annual Financial Return](#).

<sup>9</sup> See [Proposal: How would we implement the proposals in this consultation](#).

1. A provider submits an application for registration.
2. If the provider's application is not in the manner and/or form set out in the section 3(5) Notice or does not contain the information required by the section 3(5) Notice, the OfS would issue a provisional decision to refuse registration. This decision will be presented in a standardised format, clearly explaining the reasons for the application's refusal and how the provider has failed to comply with the OfS's requirements for a registration application.
3. The provider would be given the statutory 28-day period, as stipulated in section 4 of HERA,<sup>10</sup> to make representations in relation to this decision. The period also provides an opportunity to submit any missing information and address deficiencies in the application. However, the OfS may decide to proceed to a final refusal decision if the required information is submitted but deemed insufficient or if it does not rectify the application to the necessary standard.
4. Following the representations period, unless the provider had submitted the required information, the OfS would be likely to issue a final decision to refuse registration, unless it considered that any representations made by the provider changed its view.
5. If a provider submits a compliant initial application but, during the registration process fails to provide additional further information as required by the OfS and within the deadlines the OfS sets, (for example the updated information in part b of the section 3(5) Notice),<sup>11</sup> the OfS may decide to issue a provisional decision to refuse registration on the basis that the provider had not complied with the OfS's requirements for a registration application. The provider would have a 28-day period in which to make representations about the provisional refusal decision before the OfS made any final decision to refuse registration.
6. If a provider submits information that we believe is inaccurate, we would normally engage with the provider in the first instance to highlight the issue and discuss the reasons for it. If the inaccuracy were trivial such as a typographical or data entry error, we may simply clarify our understanding or request the correct information from the provider. However, if the inaccuracy were non-trivial and suggested an issue with the provider's control of its information, such as its record-keeping or its ability to extract information from its own records correctly, or the general competency with which it had put the application together, we may consider it appropriate to refuse the provider registration on the basis that it had not complied with our application requirements. If we made a provisional decision to refuse registration on this basis, the provider would be given the statutory 28-day representations period during which it could provide its explanation for the inaccuracy or inaccuracies and submit the correct information.
7. If a provider intentionally submits information that is false or misleading, we would be very likely to conclude that it had not met the 'accuracy' requirement set out in the notice and, as described in paragraph 24 above, we would make a provisional decision to refuse registration. In this case, even if a provider did subsequently submit accurate

---

<sup>10</sup> See [Higher Education and Research Act 2017](#).

<sup>11</sup> Proposed section 3(5) Notice is contained in Annex A.

information as part of any representations it made, we may conclude that this did not remedy the original issue(s) with its application.

## **Publishing decisions to refuse registration to a provider**

32. Our current policy is that we would normally expect to publish any decision to refuse registration to a provider. This is because we consider there to be a fundamental principle that our regulation should be transparent.<sup>12</sup> However, the OfS can use its discretion in deciding whether to publish any decision, including a decision to refuse registration. We consider a range of factors in deciding whether to publish information, including the public interest, the student interest and the provider interest in making that information public. If we adopt the proposals in this consultation, we would consider whether or not to publish any decision to refuse registration to a provider because it had not complied with the requirements for a registration application. We may consider that these factors apply differently to a situation in which a provider had not complied with the requirements of a registration application than a situation in which a provider had not satisfied one or more of the initial conditions of registration, following our assessment.

## **Support for providers**

33. We recognise that providers need to familiarise themselves with a substantial amount of guidance before starting to develop an application for registration. While this may initially seem challenging, we think it serves as an essential foundation, ensuring a provider has the necessary information to navigate the process effectively and meet the required standards.

34. We currently provide the following information to support a provider applying for registration:

- a. Detailed guidance available on our website, including updated regulatory advice for the registration of English higher education providers.<sup>13</sup>
- b. Responses to individual queries from providers via correspondence, including when they request an access key to the OfS portal.
- c. Where required, calls or virtual meetings to clarify particular issues, usually after an application has been submitted.

35. In making the proposals in Part 3 of this consultation we recognise that some providers may benefit from an opportunity to discuss their upcoming application and ensure that they have fully engaged with, and understood, the OfS's requirements in detail. Given our proposal to introduce new submission requirements, we propose to offer the following support:

- a. A pre-application virtual meeting for any provider seeking registration. We propose to set out this offer in revised registration guidance. We would envisage setting up the meeting either at each applicant's request, or when an applicant set up an account on our application portal (if it had not already requested the meeting).

---

<sup>12</sup> We describe how we make decisions about what information to publish in Regulatory advice 21. See [Regulatory advice 21: Publication of information](#).

<sup>13</sup> See [Regulatory advice 3: Registration of English higher education providers with the OfS](#).

- b. The pre-application meeting would signpost the provider to our registration guidance and all registration requirements, including the section 3(5) Notice (if we have adopted it following this consultation), and give an opportunity for the provider to ask questions and for us to provide clarifications. Our engagement will not include business or strategic advice.

36. We may also consider other engagement and support such as webinars and workshops. In all cases we will need to balance the most effective use of our resources alongside sector needs.

#### **Question 1a**

Do you agree or disagree with the proposal that the OfS should issue a decision under section 3(5) of HERA, which would establish the requirements for an application for OfS registration? Please give reasons for your answer.

#### **Question 1b**

Do you have any comments on the proposed section 3(5) Notice set out in Annex A of Part 3 of this consultation?

#### **Question 1c**

Do you agree or disagree that the proposed pre-application support would be beneficial to a provider applying for OfS registration? Please explain why.

## **Alternative options considered**

37. We considered whether alternative options would enable us to achieve the objectives we have set out in paragraph 17. These alternatives are set out in Annex C:

- a. continuing the current arrangements
- b. offering enhanced pre-application support.

#### **Question 1d**

Do you support any of the alternative options we have set out in Part 3, Annex C, Proposal 1, or do you have any other proposals? If so, please explain and provide reasons for your view.

38. We have also considered alternative options for some of the individual information requirements proposed within the section 3(5) Notice. These information requirements and the alternatives we have considered are explored in Proposals 2, 3 and 4, alongside explanations of why we think each requirement is appropriate. A summary is shown in Table 1 below. Each requirement addresses distinct aspects of our registration assessment and objectives, and our provisional view is that adopting only a subset of these requirements or adopting one of the alternatives we have considered for each requirement would fail to achieve our overall aims. For completeness we have also listed the proposed new initial conditions C5 and E7 and

explained where respondents can find more information about the alternatives considered in relation to those proposals.

**Table 1: Summary of new proposed submission requirements for a registration application and where alternative options have been considered**

<b>Registration requirement</b>	<b>Summary of submission requirements in the proposed section 3(5) Notice</b>	<b>Alternative options considered</b>
<b>General</b>	<ul style="list-style-type: none"> <li>• A diagram of the provider's corporate structure and ownership</li> </ul>	Part 3: Annex C (Proposal 2d)
<b>Financial information to assess initial condition D</b>	<ul style="list-style-type: none"> <li>• Financial scenario planning, accompanying commentary and mitigating actions</li> </ul>	Part 3: Annex C (Proposal 2a)
<b>Financial information to assess initial condition D – during the registration process</b>	<ul style="list-style-type: none"> <li>• Updated financial and student number tables</li> <li>• Detailed commentary to accompany the financial and student number tables to explain the data provided</li> </ul>	Part 3: Annex C (Proposal 2b)
	<ul style="list-style-type: none"> <li>• Audited financial statements for any financial years that are completed after the provider's initial submission of its registration application</li> </ul>	Part 3: Annex C (Proposal 2c)
<b>List of matters to report during the registration process</b>	<ul style="list-style-type: none"> <li>• Providers must report any of the specified matters arising within 28 working days of becoming aware of the matter for the duration of the assessment (from initial submission until a final decision is received)</li> </ul>	Part 3: Annex C (Proposal 4)
<b>Proposed initial condition C5</b>	<ul style="list-style-type: none"> <li>• Template contract(s) that set out the terms and conditions for the provision of higher education</li> <li>• Template contract(s) between a student and the provider for specified ancillary services or facilities</li> <li>• Any policies under which the provider may make changes to courses, qualifications, modes of study, teaching location and facilities and course fees</li> <li>• Complaints process(es)</li> <li>• Refund and compensation policy</li> <li>• Initial condition C5 declaration form</li> <li>• Initial condition C5 submission checklist</li> </ul>	Part 1: Annex B

Registration requirement	Summary of submission requirements in the proposed section 3(5) Notice	Alternative options considered
<b>Proposed initial condition E7</b>	<ul style="list-style-type: none"> <li>• All documents that establish the provider and set out the rules governing how the provider is constituted and governed</li> <li>• Governing body documents</li> <li>• Risk and audit documents</li> <li>• Decision-making documents</li> <li>• Conflict of interests policy</li> <li>• Any other documents (including shareholder agreements) which contain rules which govern the operation of the provider's governing body</li> <li>• Business plan</li> <li>• Policies or procedures that set out how the provider ensures individuals are fit and proper</li> <li>• Declaration stating whether the provider is aware of any indicative matters as listed in E7D.2 and E7D.4 of proposed initial condition E7 for any Relevant Individuals</li> <li>• Details of Relevant Individuals for fit and proper assessment</li> <li>• Document(s) that identify risks and corresponding mitigations relating to the prevention of fraud and protection of public funds (for example a risk register or relevant excerpts from a risk register)</li> <li>• Document(s) setting out the provider's internal control processes relating to the prevention of fraud and protection of public funds</li> <li>• A whistleblowing policy</li> <li>• An anti-bribery policy</li> <li>• Fraud and public funding declaration form</li> </ul>	Part 2: Annex B
<b>General</b>	<ul style="list-style-type: none"> <li>• Investigations declaration form</li> </ul>	Part 3: Annex C (Proposal 3)

## Proposal 2: Information about financial viability and sustainability and corporate structure

### What we are proposing

Proposal 2a	to require a provider to submit additional financial scenario planning, commentary and mitigation plans as part of its initial registration application
Proposal 2b	to require a provider, during the registration application process, to submit updated financial and student number tables and commentary
Proposal 2c	to require a provider, during the registration process, to submit audited financial statements for any financial years that are completed after the provider's initial submission of its registration application, and before the OfS makes a final decision about the provider's registration
Proposal 2d	to require a provider to submit a diagram showing its corporate structure and ownership as part of its initial registration application

### Proposal 2a: Financial scenario planning with commentary and mitigation plans

#### What we are proposing

To require a provider to submit additional financial scenario planning, commentary and mitigation plans as part of its initial registration application

#### Why we are making this proposal

39. Being financially viable and sustainable is an important requirement of the OfS regulatory framework.<sup>14</sup> Condition D requires that:

- a provider is financially viable and sustainable
- has the necessary financial resources to provide and fully deliver the higher education courses as it has advertised and as it has contracted to deliver them
- has the necessary financial resources to continue to comply with all conditions of its registration.

---

<sup>14</sup> See condition D at paragraphs 397 to 423 of [Regulatory framework for higher education in England](#).

40. 'Financially viable' means that there is no reason to suppose the provider is at material risk of insolvency within a period of three years from the date on which the judgement is made.
41. 'Financially sustainable' means the provider's plans and projections must show that:
- it has sufficient financial resources to provide and fully deliver the higher education courses as it has advertised and contracted to deliver them
  - it can continue to comply with all conditions of its registration for the period of five years from the date on which the judgement is made
  - it is likely to be able to operate in accordance with these plans and projections over this period.
42. During registration the OfS carries out a comprehensive assessment of a provider's financial performance and position, to decide whether the provider satisfies initial condition D. We receive evidence from each provider to inform this assessment, including:
- a. Full, audited financial statements (for up to three years, depending on how long the provider has been operating).
  - b. Financial forecast tables, including the current year budget and four-year forecasts for financial and student number data, as well as underlying details of any growth or divestment plans.<sup>15</sup>
  - c. Commentary to support the financial forecast tables to ensure that the OfS understands the provider's context and the assumptions underlying its forecasts.
43. In some cases, we may request additional financial information from a provider during our assessment.
44. In light of the financial context of the English higher education sector, we think that it is only possible for us to conclude confidently that a provider will be financially viable for a period of three years and sustainable for a period of five years if:
- it can demonstrate that it can withstand adverse financial conditions
  - its financial plans are sufficiently flexible and resilient for it to adapt in the face of such adversity without students being negatively impacted.
45. Some features of a provider's model might indicate increased risk. For example, it might rely on recruiting international students for financial sustainability. But we think that the risks facing the sector as a whole mean that any provider applying to register needs to demonstrate this resilience, not just those with particular models. This is why we propose that this information would be a requirement for all providers to submit as part of a registration application and why it is appropriate that the OfS would be able to provisionally refuse registration based on an incomplete application if a provider did not submit it.

---

<sup>15</sup> See 'Template for financial and student numbers tables' at [Regulatory advice 3: Registration of English higher education providers with the OfS](#).

46. With respect to the particular scenarios that we are proposing, we have developed these alongside our analysis and modelling of the financial sustainability of the regulated higher education sector in England, which was published in November 2024.<sup>16</sup> The latest information indicates that, overall, UK and non-UK student recruitment is significantly below the sector's expectations and, for some providers, in line with the more pessimistic scenarios modelled in our May report.<sup>17</sup> Autumn 2024 recruitment outcomes have varied significantly for different types of higher education provider, and for providers within similar groups. Based on our latest modelling, we estimate UK undergraduate entrants to be, in aggregate, 10 per cent lower than the sector's forecasts for 2024-25, and non-UK entrants to be 23 per cent lower than those forecasts. In response to these pressures, providers are changing their student recruitment behaviour and students' choices are also changing. It is therefore appropriate for all higher education providers to be thinking about the impact this could have and how they will remain financially sustainable if they have fewer new students than they had forecast or planned.
47. The proposed scenario for a provider not yet delivering higher education has been developed based on our experience of the past few years, where we have seen that many providers new to higher education, or in the early stages of operation, significantly underrecruit in the years immediately following registration compared with their forecasts. Of a sample analysis of providers that applied for registration in 2021 or later, and that had not previously delivered higher education when they applied for registration, we found that:
- a. Around a third of providers deferred their initial planned recruitment cycles and did not immediately recruit students once registered, which resulted in a longer period of zero growth than had been forecast, as they prepared to deliver higher education.
  - b. Once student recruitment did commence, in providers' first full cycle of student recruitment after registration, more than half substantially underrecruited against their original forecasts (by 80 per cent or more).
48. We think that our proposed scenario planning provides an opportunity for realistic stress testing of forecast financial plans. For a new provider, the early stage of operations is often the most vulnerable. We think that the proposed scenario planning would provide a clear indication of how a provider's financial model holds up under realistic adverse conditions and provides a rigorous test of whether a provider can maintain financial viability and sustainability, as required by initial condition D.
49. It is clear that the financial context for the sector is becoming even more challenging. Student recruitment is more challenging, particularly international student recruitment, and there is a pattern of recruitment forecasts that are too ambitious across the sector. We therefore think it is appropriate to consider stress testing forecasts as part of initial condition D during our registration assessment.
50. We think that the proposed scenarios are a realistic reflection of the financial challenge a provider may encounter in the short-to-medium term and should form a part of our

---

<sup>16</sup> See [Financial sustainability of higher education providers in England: November 2024 update](#).

<sup>17</sup> See [Financial sustainability of higher education providers in England: 2024](#).

assessment of whether a provider applying for OfS registration meets the requirements of initial condition D, that is, that the provider is financially viable and sustainable.

## Details of the proposal

51. In addition to the information already required as part of initial condition D, we are proposing that a provider submits an additional financial table and associated commentary and mitigations which models different scenarios (for example, less favourable levels of student recruitment) and the associated impact on the provider's financial viability and sustainability. We would use this information to inform our assessment of whether the provider meets the requirements of initial condition D.<sup>18</sup> This proposal focuses on requiring a provider to analyse its existing financial data in new ways rather than providing entirely new information.
52. The proposed scenarios specified below would be incorporated into the current financial tables template<sup>19</sup> with additional fields for commentary. Completing these scenarios would be a requirement of the proposed section 3(5) Notice set out in Proposal 1 and attached at Annex A of Part 3 of this consultation. If a provider did not complete these proposed scenarios, the OfS could provisionally refuse the provider registration on the basis that its application did not meet the OfS's requirements (see Proposal 1 paragraph 31).
53. We propose that a provider applying for OfS registration that is **already** delivering higher education should include the scenarios set out in Table 2 below.

---

<sup>18</sup> See condition D at paragraphs 397 to 423 of [Regulatory framework for higher education in England](#).

<sup>19</sup> See 'Template for financial and student numbers tables' at [Regulatory advice 3: Registration of English higher education providers with the OfS](#).

**Table 2: Proposed scenario planning information that a provider already delivering higher education would be required to submit as part of a registration application**

Provider already delivering higher education	Proposed scenario parameters	Proposed information required	What this information will be used for
Scenario 1	Financial projections assuming <b>zero growth</b> in higher education students, across all levels and domiciles, enrolling at the provider (new student entrants only), and the corresponding fee income reduction, each year for the four years following a provider's OfS registration application submission.	<ul style="list-style-type: none"> <li>• Forecast student numbers for each year, expressed as FTE by domicile and corresponding fee income</li> <li>• Forecast expenditure and commentary</li> <li>• Commentary to explain the financial data to ensure that the OfS understands the provider's context and the assumptions underlying its data</li> <li>• An explanation of mitigations the provider would initiate to limit the negative impacts should the scenario arise</li> </ul>	<ul style="list-style-type: none"> <li>• Test the financial viability of a provider without growth</li> <li>• Evaluate the sustainability of a provider's existing operations</li> <li>• Understand the impact of realistic higher education sector risks</li> <li>• Understand a provider's reliance on optimistic student recruitment assumptions</li> </ul>
Scenario 2	Financial projections assuming <b>40 per cent fewer</b> than forecast higher education students, across all levels and domiciles, enrolling at the provider (new student entrants only), and the corresponding fee income reduction, for the year following a provider's OfS registration application submission, followed by <b>zero growth</b> in student numbers and fee income over the subsequent three years.		<ul style="list-style-type: none"> <li>• Test a provider's financial resilience to substantial income reduction</li> <li>• Understand a provider's contingency planning</li> <li>• Understand a provider's financial reserves and flexibility</li> <li>• Assess a provider's risk management practices</li> </ul>

54. For a provider **not yet** delivering higher education, we propose that the provider would need to include the scenario set out in Table 3 below:

**Table 3: Proposed scenario planning information that a provider not yet delivering higher education would be required to submit as part of a registration application**

Provider <b>not yet</b> delivering higher education	Proposed scenario parameters	Proposed information required	What this information will be used for
Scenario	Financial projections assuming <b>zero growth</b> in higher education students, across all levels and domiciles (new student entrants only i.e. no students join), and the corresponding fee income reduction for the year following a provider's OfS registration application submission, followed by <b>80 per cent fewer</b> student enrolments than forecast, across all levels and domiciles (new student entrants only) and the corresponding fee income reduction for each of the subsequent three years	<ul style="list-style-type: none"> <li>• Forecast student numbers for each year, expressed as FTE by domicile and corresponding fee income</li> <li>• Forecast expenditure and commentary</li> <li>• Commentary to explain the financial data to ensure that the OfS understand the provider's context and the assumptions underlying its data</li> <li>• An explanation of mitigations the provider would initiate to limit the negative impacts should the scenario arise</li> </ul>	<ul style="list-style-type: none"> <li>• Test the financial resilience of a provider to severe student recruitment shortfalls</li> <li>• Assess the financial buffer and contingency planning of a provider</li> <li>• Test if a provider is financially sustainable without rapid expansion</li> </ul>

55. We propose that the scenario information proposed above would be incorporated within the current financial tables template,<sup>20</sup> ensuring that the analysis is integrated into the existing financial data submission process, which ensures consistency in how scenarios are analysed and presented across all registration applications.
56. We propose that a financial tables template would be appended to the section 3(5) Notice set out in **Annex A** of Part 3 of this consultation. This would make it a formal requirement for a provider to complete this analysis as part of its application for registration (and a provider could have its application refused if this information were not submitted).
57. Due to the challenging higher education student recruitment environment, as outlined above, our proposal is that the requirements for financial modelling, as part of initial condition D, may be amended from time to time to reflect emerging sector issues and our analysis of financial risk in the sector.
58. We may, at a later date, set out further financial modelling scenarios with different parameters for a provider with a business model that is not predominantly driven by higher education student income. We may do this through updated guidance, or an updated section 3(5) Notice.
59. The proposal would apply to any unregistered provider making an application to register with the OfS after the publication of our decisions following this consultation.
60. We propose that these requirements would not routinely apply to applications from a registered provider to change its category of registration. For applications to change category of registration, we propose that we would issue a bespoke section 3(5) Notice setting out the information we required that provider to submit according to its circumstances. In general, we require a provider that is already registered with the OfS to submit less information for this type of registration application, because we already hold regulatory information about the provider through routine monitoring. We may however request this information as part of a bespoke section 3(5) Notice
61. In developing our proposed approach, we carefully considered the potential impact on providers.
62. We considered whether this proposal may lead more often to a provider failing to satisfy initial condition D and therefore being refused registration, if it could not show how it could withstand the modelling scenarios set out and remain viable and sustainable. As we have set out, we are not proposing to change the requirements of initial condition D. If a provider that applies for registration has sufficient resources to be financially sustainable for a period of five years and deliver the higher education it has advertised, we would be likely to find that it met initial condition D.
63. In setting out the scenarios according to the parameters we have proposed, a provider could set out the mitigations it would put in place to ensure it remained viable and sustainable in these scenarios, or to manage the impact on students. This might mean for example:

---

<sup>20</sup> See 'Template for financial and student numbers tables' at [Regulatory advice 3: Registration of English higher education providers with the OfS](#).

- not starting enrolment onto a course that was going to be unsustainable in such a scenario
  - considering how the course could still be delivered with an alternative staffing model or other cost savings measures
  - securing additional investment or income from other sources to compensate for the loss of student fee-related income.
64. Further, if the provider could provide evidence that the scenarios the OfS had applied were unrealistic in the context of its planned higher education strategy, and that there was high certainty of achieving its forecasts, we propose that the OfS would also take this into account.
65. If, under our proposals, a provider could not show how it would remain viable and sustainable or deliver the higher education courses it had advertised, even taking into account any mitigations it would deploy, and any other contextual information relevant to the assessment, the OfS may conclude that the provider did not meet one or more of the existing requirements of initial condition D. If the OfS made a provisional decision to refuse registration because a provider did not meet initial condition D, the provider would be given a statutory period of 28 days to submit any representations about the provisional decision, including providing additional information not previously considered by the OfS.
66. Our initial view is that a provider in this situation would have been likely to have been refused registration under the existing information submission requirements for initial condition D even if it had not provided scenario planning, on the basis of the provider's underlying financial position and its plans to deliver higher education. However, the OfS may be able to reach its judgement more quickly and efficiently (and avoid lots of back-and-forth clarifications with the provider) where scenario planning has been provided. The scenario planning would also help ensure that the OfS's assessment is as robust as possible.
67. We also considered the additional burden of preparing this financial information, particularly requiring predetermined modelling criteria instead of allowing a provider to use its own. We recognise that this proposal may place demands on a provider's finance staff or may mean that it needs to procure external expertise for financial modelling. And, if a provider did not submit this information as part of its initial registration application, the provider may have its application refused.
68. However, our initial view is that the current and medium-term financial challenges in the higher education sector justify these burdens. Ensuring robust financial planning is essential not only for providers but also for protecting students' interests and this should include stress testing of assumptions.
69. This proposal aims to encourage a provider to engage fully with the financial risks and challenges prevalent in the sector and to plan effectively for maintaining its financial viability and sustainability in the context of these risks and challenges. While this process may require additional effort, our initial view is that it ultimately benefits providers by encouraging them to proactively address potential vulnerabilities in their financial models. Where a provider does need to spend additional resources on undertaking the proposed financial modelling, we think that this would be a necessary investment to support realistic planning.

70. Ultimately this proposal aims to protect students. By requiring providers to demonstrate financial viability and sustainability under adverse but realistic conditions, the OfS can reduce the risk of financial instability that could disrupt students' education. Testing scenarios of zero growth and significant shortfalls in student enrolments is critical to assessing whether a provider can withstand financial challenges and deliver on its commitments to students.
71. In light of the increasing diversity of providers and the risks posed by market competition and economic fluctuations, we think that these scenarios represent a realistic and necessary measure of resilience. By ensuring that providers are equipped to handle financial challenges, this proposal contributes to a more stable and reliable higher education sector, ultimately safeguarding the educational experience and opportunities available to students.

## Alternative options considered

72. In considering this proposal we considered several alternative approaches which we have set out in Annex C of Part 3 of this consultation. These options considered were:
- a. continuing the current arrangements
  - b. proposing more flexible scenario planning.

We are seeking views in Part 3 of this consultation on the principle of requiring additional scenario planning and the scenario-planning parameters.

We want to hear respondents' views on the balance we are seeking to achieve in requiring additional financial information due to the increased risk posed by the operating environment for a provider's financial viability and sustainability and the increased regulatory burden this may create for a provider seeking OfS registration.

### Question 2a (i)

Do you agree or disagree with the proposal to require a provider to submit additional scenario planning, commentary and mitigation plans as part of the OfS registration application? Please give reasons for your answer.

### Question 2a (ii)

Do you agree or disagree that the proposed financial scenario parameters for a provider **already delivering** higher education provide a realistic challenge to a provider's financial forecasts? Please give reasons for your answer.

### Question 2a(III)

Do you agree or disagree that the proposed financial scenario parameters for a provider **not yet delivering** higher education provide a realistic challenge to a provider's financial forecasts? Please give reasons for your answer.

## Question 2a (IV)

Do you support any of the alternative options we have set out in Part 3, Annex C, Proposal 2a of this consultation, or do you have any other proposals? If so, please explain and provide reasons for your view.

## Proposal 2b: Requiring updated financial and student numbers tables with commentary towards the end of a registration assessment

### What we are proposing

**To require a provider, during the registration application process, to submit updated financial and student number tables and commentary**

### Why we are making this proposal

73. The current published timeline for registration, based on a positive assessment, is 46 weeks from the point we confirm an application is complete. The period of nearly one year means that it is common for a provider's financial position to change significantly during the course of the OfS's assessment. By requiring updated financial and student numbers tables, the OfS can assess a provider's financial health at (or very close to) the point of registration and whether it has changed since the initial registration application. This enables the OfS to determine whether the provider meets the requirements of initial condition D at the point at which it is registered.
74. The financial situation of a provider can change significantly between its initial application and our registration decision. Factors such as unexpected costs, changes in funding, changing student recruitment patterns, changes in partnerships or shifts in the economic environment can affect a provider's financial position and result in material changes even in a short time. Relying on static data from a provider's initial registration application may therefore not reflect a provider's circumstances at the time that the registration decision is made. Updated financial and student numbers information and commentary allow the OfS to understand any such changes and ensure that the provider still demonstrates financial viability and sustainability under current conditions.
75. We are increasingly finding that we need to request additional financial information from a provider during most registration assessments. We will usually do this if there is a significant change in the provider's position or where previous financial information submitted as part of the application is no longer up to date. This is more likely if a registration assessment takes longer than one year, which may happen where the assessment involves complex judgements, or the OfS needs to seek further information to establish whether a provider satisfies conditions of registration. Where we request updated information, it is usually in the form of updated financial and student numbers tables and associated commentary, along with any additional years of audited financial statements that are available.

76. We think that this proposal will streamline this interaction, avoid the need for frequent updating of a provider’s financial position through the registration assessment and avoid delays that are created when a provider is not expecting a request for updated information. Making this requirement visible and transparent to a provider ensures it can plan and prepare to avoid delays in the process.

## Details of the proposal

77. We propose to require a provider to submit an updated version of its financial and student numbers table and commentary towards the end of the registration assessment.

78. We propose that submitting updated financial and student numbers tables during the registration assessment period would be a requirement imposed via the proposed section 3(5) Notice set out in Proposal 1 above. The financial and student numbers table template would be appended to the section 3(5) Notice (**Annex A** of Part 3 of this consultation) which would make these a formal requirement for a provider to submit as part of its application for registration. This would mean that we could provisionally refuse registration if a provider did not submit this information.

79. Table 4 below sets out how this proposal would operate in practice and how it differs from the current finance and student number data requirements:

**Table 4: Comparison of current and proposed submission requirements for financial and student numbers tables**

	Current requirement	Proposal
<b>As part of a registration application</b>	As part of a registration application, submit financial and student numbers tables in the published template. A provider must include historical and forecast information about student numbers and its financial performance and position	No change
<b>During registration assessment</b>	OfS may request an updated version of the financial and student number tables during the registration assessment. This is more likely if the registration assessment takes longer than one year	Submit an updated version of the financial and student number tables towards the end of the registration assessment, once the provider’s quality and standards assessment is complete and before the OfS makes a registration decision.  The OfS will confirm when the updated information must be submitted, and it must be submitted within 60 working days of the OfS’s request.  The OfS could at its discretion still request updated financial information, including updated financial and student numbers tables, at other times during the assessment.

80. The proposal would apply to any unregistered provider making an application to register with the OfS after we publish our decisions following this consultation.
81. We propose that these requirements would not routinely apply to applications from a registered provider to change its category of registration. For applications to change category of registration, we propose that we would issue a bespoke section 3(5) Notice setting out the information we required the provider to submit according to its circumstances. In general, we require a provider that is already registered with the OfS to submit less information for these types of registration application, because we already hold regulatory information about that provider through routine monitoring. We may however request this information as part of a bespoke section 3(5) Notice.
82. We have considered the impact of this proposal, in particular the mechanism through which the requirement would be imposed. Under the proposed section 3(5) Notice set out at Proposal 1, the OfS could refuse a registration application if a provider did not submit the information set out in the notice. This means that if a provider failed to submit an updated financial and student numbers table within the specified time (we propose within 60 days of the OfS notifying the provider that the updated submission is required), a provider's application to register may be refused.
83. We think that the rapidly changing higher education landscape, combined with the gravity of the financial challenges currently facing the sector and anticipated in the medium term, justify robust measures to ensure the viability and sustainability of each provider. This proposal introduces additional requirements for a provider seeking OfS registration. But we think that the likely benefit of this proposal outweighs the burden because it would help ensure that regulatory decisions are based on the most accurate and up-to-date information. This would reduce the risks associated with registering a provider where its financial or operational conditions may have materially deteriorated since its initial application, as we have seen in some cases.

## **Alternative options considered**

84. We have considered the principle of proportionality and the need to adopt the least intrusive means to achieve our aim of ensuring accurate, reliable, and up-to-date financial and student data from each provider applying for registration. Several alternatives were assessed, and these are set out in Annex C of Part 3 of this consultation. The alternatives considered were:
  - a. continuing the current arrangements
  - b. requesting only confirmation of any changes
  - c. requiring financial information to be submitted only at the end of the registration process.

### **Question 2b (I)**

Do you agree or disagree with the proposal to require a provider, during the registration process, to submit updated financial and student number tables and commentary? Please give reasons for your answer.

## Question 2b (ii)

Do you support any of the alternative options we have outlined in Part 3, Annex C, Proposal 2b, or do you have any other proposals? If so, please explain and provide reasons for your view.

# Proposal 2c: Requiring audited financial statements during the registration application

## What we are proposing

**To require a provider, during the registration process, to submit audited financial statements for any financial years that are completed after the provider's initial submission of its registration application, and before the OfS makes a final decision about the provider's registration**

## Why we are making this proposal

85. As explained above, the current published timeline for registration, based on a positive assessment, is 46 weeks from the point we confirm an application is complete. During the registration process it is not uncommon for matters to change at a provider while our assessment is underway. The proposal means that we can assess a provider's current financial position and how it has evolved since its initial registration application.
86. Because audited financial statements are prepared and reviewed by independent auditors, we can place assurance on the figures in the statements being accurate, because the independent auditor has previously satisfied themselves of this. This means that we can place assurance on audited financial statements as containing accurate information for us to use to assess whether a provider meets the requirements of initial condition D.
87. Financial statements offer a detailed view of a provider's income, expenses, assets, liabilities, and cash flow. By reviewing audited financial statements for the most recent financial year, we can identify any emerging risks, such as declining revenue, increasing debt, or cash flow issues, that could threaten the provider's financial viability. It will also allow us to assess whether the requirements of initial condition D have been met.

## Details of the proposal

88. Currently a provider is required to submit audited financial statements, as set out in initial condition D.
89. We propose that a provider would be required to submit audited financial statements for any financial years that are completed:
  - a. After the provider's initial submission of its registration application; and
  - b. Before the OfS makes a final decision about the provider's registration application.

90. We propose to require a provider to submit audited financial statements no later than nine months after the end of the relevant financial year for any financial years that are completed after the provider submitted its application for registration.
91. Our initial view is that this timeframe balances practicality, regulatory need, and alignment with usual practice. Many, though not all, providers are required to produce audited financial statements as part of their statutory obligations. Where entities are required to file audited statements with Companies House, the deadline for filing is within nine months of the end of the financial year. The Charity Commission for England and Wales, which regulates many higher education providers, also requires submission of audited financial statements within a similar timeframe (ten months).
92. We think that aligning the proposed submission timeframe with existing reporting requirements of other bodies helps minimise the administrative burden that this proposal may have on a provider when it is not yet registered, and therefore not yet receiving any of the benefits of registration. Once a provider is registered and can access the benefits of registration, we require it to submit audited financial statements within a shorter timeframe; within five months of its financial year end as part of the Annual Financial Return data return. This shorter timeframe is necessary for the OfS to monitor effectively the financial health of individual providers and the sector as a whole.
93. This proposal would apply to any new application for registration submitted after publication of our decisions following this consultation.
94. We propose that this requirement would not routinely apply to an application from a registered provider to change its category of registration. For applications to change category of registration, we propose that we would issue a bespoke section 3(5) Notice setting out the information we required the provider to submit according to its circumstances. In general, we require a provider that is already registered with the OfS to submit less information for these types of registration application, because we already hold regulatory information about that provider through routine monitoring. We may however request this information as part of a bespoke section 3(5) Notice where we deem this necessary according to the circumstances of the provider.
95. We have considered the impact of this proposal, in particular the mechanism through which the requirement would be imposed. Under the proposed section 3(5) Notice set out at Proposal 1, the OfS could refuse a registration application if a provider did not submit the information set out in the notice. This means that if a provider failed to submit audited financial statements for any financial years completed after a provider's initial submission of its registration application within nine months of the end of the relevant financial year, a provider's application to register may be refused.
96. We acknowledge that this proposal may increase regulatory burden for a provider seeking OfS registration. Depending on the timing of a provider's registration application, it may not impose any additional burden at all, if the OfS completes its assessment and makes a decision before the provider's next year of financial statements become due. However, for some providers it will impose additional burden and it may have a greater impact on any provider that does not otherwise need to prepare audited financial statements for any relevant year(s) (for example, a provider that does not need to submit audited accounts to Companies House due to its size

or legal form). A provider may need to allocate additional time, resource and expertise to liaising with and paying auditors, compiling financial data and ensuring that accounts are audited within the given timeframe.

97. Our initial view is that the benefit of this proposal outweighs the burden this requirement may place on a provider. In addition to the detailed, independently verified and up-to-date financial information this provides for the purposes of our assessment, we also think this is the case because a provider will be required to submit audited accounts as part of its annual financial return<sup>21</sup> when it is registered. So, we propose that if a provider meets this requirement as part of its registration application this will help it prepare to comply with ongoing regulatory requirements if it is registered.

## Alternative options considered

98. In developing this proposal, we have considered whether our proposal is proportionate, and whether there are other options that could achieve our aim with less burden. The alternative options we considered are listed below and set out in Annex C of Part 3 of this consultation:
- a. continuing the current arrangements
  - b. relying on unaudited financial data
  - c. proposing a longer deadline.

### Question 2c (i)

Do you agree or disagree with the proposal to require a provider, during the registration process, to submit audited financial statements for any financial years that are completed after the provider's initial submission of its registration application, and before the OfS makes a final decision about the provider's registration? Please give reasons for your answer.

### Question 2c (ii)

Do you support any of the alternative options we have outlined in Part 3, Annex C, Proposal 2, or do you have any other proposals? If so, please explain and provide reasons for your view.

---

<sup>21</sup> See paragraphs 397 to 423 of the OfS regulatory framework at [Condition D: Financial viability and sustainability](#).

## Proposal 2d: Diagram showing corporate structure and ownership

### What we are proposing

We propose to require a provider to submit a diagram showing its corporate structure and ownership as part of its registration application. The diagram should:

- include all legal and beneficial owners of the provider (direct and indirect), including the ultimate beneficial owner, whether individuals or corporate entities
- include any trusts with ownership interests (direct or indirect) in the provider together with an explanation of what ownership interests the trust has, and the nature of the trust, including whether it is owned by any other legal or natural person and who its beneficiaries are
- illustrate the provider's position alongside its parent and subsidiary undertakings (where it has these), as defined by the Companies Act 2006<sup>22</sup>
- include other entities that fall under a common parent undertaking to the provider applying to be registered
- illustrate the relationship between all individuals and entities shown.

### Why we are making this proposal

99. Currently, when a provider applies for registration, it submits information about its structure on the 'corporate information' section of the application form. We ask for this information to understand the provider's corporate, control and ownership structures. This includes the following:

- a. The provider's legal form, company number (if applicable) and charity number (if applicable).
- b. A list of the provider's relationships with linked organisations (this includes parent companies, subsidiary companies and other linked organisations), including the names and company numbers of any linked organisation.

100. However, we have found that where a provider's corporate structure or ownership is complex, the information we currently request does not provide everything we need to understand its corporate structure and ownership.

101. In our experience, the types of providers seeking registration with the OfS now often have complex corporate structures that can include partial or full ownership by other entities and multiple parent or subsidiary companies. Understanding these structures and the relationships

---

<sup>22</sup> See Section 1162 and Schedule 7 of [Companies Act 2006](#).

between each entity can be time-consuming. If we do not have a clear view of a provider's corporate structure and ownership when conducting our assessment, this can lead to:

- the assessment being inaccurate
- not properly taking account of risks (for example, risks relating to a provider's financial position) and being significantly delayed
- prolonging the time we take to reach a decision while we request additional information and clarification from the provider.

102. We propose that the requirement for a provider to submit a diagram showing its corporate structure and ownership would address the challenges outlined above in the following ways:

- a. The diagram would provide the OfS with a clearer and more comprehensive starting point to understand a provider's context than the existing required list of linked organisations alone. It would support a quicker understanding of a provider's wider ownership, control and governance arrangements, and financial interdependencies, enabling a more efficient overall assessment.
- b. Providing a diagram at the point of application would reduce the need to seek additional information once an application had been submitted, therefore reducing delays to the assessment that could be avoided.

## Details of the proposal

103. The proposed requirement would be set out in the section 3(5) Notice which would impose requirements for all registration applications, as set out in Proposal 1 and **Annex A** of Part 3 of this consultation. This would mean that the submission of this diagram is a mandatory component of a registration application and that if a provider does not submit it, the OfS may refuse its registration application.

104. This new requirement is intended to provide greater transparency about the ownership and governance of a provider and quickly provide the OfS with a holistic understanding of the overall corporate structure in which it sits, facilitating a more efficient assessment overall. We think that this requirement will be easy for providers to comply with and that most providers are likely to already have this type of diagram.

105. We propose that the diagram will be used as contextual information to help the OfS assess requirements that include but are not limited to:

- a. Initial condition D – the OfS may use the diagram to support its understanding of the provider's financial position, particularly in cases where a provider's financial viability and sustainability relies on its parent undertaking or any other entities in its corporate structure.
- b. Proposed initial condition E7 – the OfS may use the diagram to verify the provider's owners (in conjunction with other information submitted by the provider as part of its registration application) and check that a provider has correctly disclosed all relevant individuals so that the OfS can assess whether they are fit and proper persons.

- c. Eligibility – the OfS may use the diagram in addition to other evidence submitted by the provider or publicly available information to determine whether the provider meets criterion 3 of the eligibility criteria relating to whether the provider is ‘an institution’. In particular, the OfS is likely to use the diagram to understand whether a provider’s parent or subsidiary undertaking is a registered provider, whether the provider is controlled by another registered provider, or provider seeking registration, and whether there is overlapping ownership with another registered provider.

106. We have set out several proposed requirements that the diagram should include. This is to ensure that the diagram achieves the objective of providing clear and comprehensive information about the provider’s corporate structure and ownership. Table 5 below explains why we think that each of these elements would be required.

**Table 5: Proposed requirements of corporate structure and ownership diagram and why these are required**

Proposed requirement of the diagram showing a provider’s corporate structure and ownership	Why this would be required
<p>The diagram should include all legal and beneficial owners of the provider (direct and indirect) including the ultimate beneficial owner, whether individuals or corporate entities</p> <p>The diagram should include any trusts with ownership interests (direct or indirect) in the provider together with an explanation of what entities the trust owns, and the nature of the trust, including whether the trust is owned by any other legal or natural person and who its beneficiaries are</p>	<p>To provide comprehensive information about the provider’s ownership</p>
<p>The diagram should illustrate the provider’s position alongside its parent and subsidiary undertakings (where it has these) as defined by the Companies Act 2006</p> <p>The diagram should include other entities that fall under a common parent undertaking to the provider applying to be registered</p>	<p>To provide a comprehensive summary of the provider’s wider corporate structure</p>
<p>The diagram should illustrate the relationship between all individuals and entities shown</p>	<p>To show clearly the nature of all relationships within a provider’s ownership and corporate structure</p>

107. We think that most providers are likely to have an existing diagram that illustrates corporate structure and ownership. If a provider did not have a suitable document and therefore needed to create one, we do not think that this would be a difficult or time-consuming task for the vast

majority of providers. For a provider that has a very simple corporate structures, for example a single legal entity, this requirement would be very straightforward.

108. We have proposed to define parent and subsidiary undertakings according to the definitions set out in section 1162 and schedule 7 of the Companies Act 2006.<sup>23</sup> Our initial view is that linking our definition to the provisions of the Companies Act is preferable to creating bespoke definitions to describe group structures and parents and subsidiaries within those structures for the purposes of OfS regulation. Linking to the Companies Act definition aligns our requirements with definitions that already apply to companies that are registered in the UK, which is the case for the majority of providers now seeking registration.

109. We propose that this requirement would apply to any new application for registration made after the publication of our decisions following this consultation.

110. We propose that this requirement would not routinely apply to applications from a registered provider to change its category of registration. For applications to change category of registration, we propose that we would issue a bespoke section 3(5) Notice setting out the information we required the provider to submit according to its circumstances. In general, we require a provider that is already registered with the OfS to submit less information for this type of registration application, because we already hold regulatory information about the provider through routine monitoring. We may however request this information as part of a bespoke section 3(5) Notice.

## Alternative options considered

111. In considering the proposal to require a corporate structure diagram as part of the registration process, we have considered whether other options would achieve the aim we set out. The options we considered are listed below and set out in Annex C of Part 3 of this consultation document:

- a. continuing the current arrangements.

### Question 2d(I)

Do you agree or disagree with the proposal to require a provider, as part of its registration application, to submit a diagram showing its corporate structure and ownership as described in this proposal? Please provide reasons for your view.

### Question 2d(II)

Do you support the alternative option outlined in Part 3, Annex C, Proposal 2d of this consultation, or do you have any other proposals? If so, please explain and provide reasons for your view.

---

<sup>23</sup> See Section 1162 and Schedule 7 of Companies Act 2006.

## Proposal 3: Submitting information about historical and current investigations

### What we are proposing

We propose to introduce a requirement, as part of a registration application, for a provider to submit summary information about any investigation of the provider, or any relevant individual at the provider, by or on behalf of any:

- awarding organisation
- awarding body
- professional body
- regulatory body
- funding body
- statutory body
- enforcement body
- public body
- other higher education provider.

This would apply to any investigation opened or concluded within the 60 months preceding the date the provider applied for registration with the OfS.

### Why we are making this proposal

112. We want to understand at the beginning of our assessment of a provider's application for registration whether a provider is, or has been, subject to any recent investigation by other regulators, funding, public or enforcement bodies. The fact of an investigation having taken place does not necessarily mean that a provider will not meet one or more initial conditions of registration. However, the outcomes of many types of investigatory activity could be relevant to the OfS's assessment.
113. We have encountered occasional situations during the registration process where a provider has not transparently disclosed historical or ongoing investigations that were relevant to our assessment of the provider's compliance with initial or ongoing conditions of registration. Part 3 of this consultation seeks views on whether this proposal would help address this issue.
114. Our experience is that when this information has subsequently come to light, it has delayed our assessment of the provider's registration application. Either it has conflicted with previous evidence we have gathered and assessed, or it has necessitated further enquiries and additional information and evidence from the provider. Most importantly, this information can have an impact on our decision to register a provider or not.

115. The aim of our proposal is to ensure we have all information which is relevant to our assessment of a provider's registration application when it submits its application. We need this information because:

- a. The subject matter of an investigation and its findings may be relevant to our own assessment of one of the initial conditions (and if this is the case, we may consider, based on the circumstances of the investigation, that we may lack some information necessary for us to make an informed judgement about whether the provider satisfies one or more initial conditions of registration).
- b. Information about the outcomes of historical investigations into a provider could be relevant to the assessment of a provider's application because it may inform our understanding of any historical patterns of non-compliance or systemic risks, as well as the effectiveness of the provider's governance. It would also help determine whether the provider has taken sufficient corrective action to address identified risks, or if those risks are likely to persist. Additionally, this information could assist in evaluating whether the provider's current management and governance arrangements are sufficient to ensure compliance with regulatory requirements.
- c. Information about an investigation into any 'relevant individual' at a provider could be relevant to our assessment of whether that individual was fit and proper, as set out in proposed initial condition E7.

116. We are concerned that if we do not fully understand the findings of any relevant investigation into a provider applying for registration, or relevant individuals at that provider, the OfS is at risk of making incomplete judgements about the regulatory risks that provider poses. In particular, we are concerned about situations in which another regulator has found poor practice or wrongdoing at a provider. Such findings may be relevant to our assessment of a provider's compliance with OfS conditions of registration, but the OfS may not take them into account because we are not aware of them. This could have serious negative consequences for the protection of the interests of current and future students and of taxpayers.

## **Details of the proposal**

117. The proposed requirement is for a provider applying for registration to inform the OfS of any investigation it has been subject to, or 'relevant individuals' at the provider have been subject to, during the 60 months preceding its registration application. This would include:

- a. Any investigation that was opened more than 60 months before the application for registration, but which concluded during the 60 months before the application for registration.
- b. Any investigation that had been opened within the 60 months preceding the application for registration and was not yet concluded, that is, was still open or where the outcomes were still pending.

118. This requirement would be imposed through the section 3(5) Notice, suggested in Proposal 1 and set out at Annex A of Part 3 of this consultation. The proposed section 3(5) Notice would state that the submission of this information is a mandatory component of a registration

application. This means that if a provider did not submit this information, the OfS could provisionally refuse its application, as described in paragraph 31.

119. The proposed information required to be submitted would be: a brief description of the investigation; the organisation or body that carried it out and when; and the outcomes or findings, including situations in which investigations were closed with no findings having been made.

120. In this proposal, 'relevant individuals' is defined in the same way as it is in proposed initial condition E7, meaning:

- a. Any member of the provider's governing body.
- b. The individual proposed as the accountable officer for the purposes of ongoing condition E3.
- c. The individual(s) proposed to hold overarching responsibility for the management of the provider's financial affairs.
- d. Any company director of the provider.
- e. Any company secretary of the provider.
- f. Any individual who holds more than 25 per cent of the shares in the provider.
- g. Where the provider has a parent company, any individual who holds more than 25 per cent of the shares in that parent company.
- h. Any individual who would have significant overarching responsibility for ensuring that the provider complies with the ongoing conditions of registration (if registered).

121. Once the provider had submitted this summary information as part of its registration application, we would determine whether we need additional information to inform our assessment. Additional information may include further explanation or the full investigation findings, for example. The factors we would be likely to consider in determining whether we need additional information about an investigation, including the outcomes of any investigation that is still ongoing, would include:

- a. The scope of the investigation or the issues to which it relates and whether these are directly or indirectly linked to OfS regulatory requirements (for example, in accordance with proposed condition E7, or compliance with the requirements of awarding bodies for the higher education qualifications a provider delivers).
- b. Whether the investigation led to formal findings, sanctions, or other actions against the provider or relevant individuals, and whether such outcomes raise concerns about the provider's eligibility for registration or ability to meet registration conditions (for example outcomes such as sanctions or actions could highlight risks or weaknesses in governance as part of our assessment of a provider in accordance with proposed initial condition E7).

- c. How recently the investigation occurred or concluded, and how relevant the outcomes are likely to be to recent or ongoing practices at the provider.

122. We would write to the provider setting out our reasoning for requiring more information with a requirement to submit the information set out in a bespoke section 3(5) Notice.

123. If we did not require any further information, we would confirm this to the provider and proceed with our assessment of the provider's registration application.

### **How we propose to treat ongoing investigations**

124. We would encourage a provider that is subject to an ongoing investigation when it is preparing to apply for registration to engage with the OfS to discuss the scope and nature of the investigation. Engagement would enable us to give a provider an indicative view of whether we would be likely to require the outcomes of the investigation before we could make a registration decision. A provider could use this information to consider any next steps, including deferring its application for registration until the ongoing investigation had been concluded and the outcomes were known.

125. If a provider subject to an ongoing investigation (or with a relevant individual subject to an ongoing investigation) did not engage with the OfS before submitting an application, our provisional view is that we would be likely to require the provider to submit the outcomes of that investigation before we could make a decision about its registration application. This would be likely to mean delaying the assessment of the provider's application until the investigation had concluded.

126. We propose to take this approach to encourage providers to engage early and proactively about any ongoing investigation. This is to avoid potential delay and wasted work for both the provider and the OfS. This could arise from situations in which a provider might spend considerable effort preparing and submitting a registration application that is then paused for a significant period, and where the information it contains eventually becomes out of date requiring significant parts of the application to be resubmitted.

127. If a new investigation were opened into a provider (or a relevant individual at that provider) after the provider had submitted a registration application and during the course of our assessment, our provisional view is that we would be likely to require the provider to submit the outcomes of that investigation before we could make a decision about its registration application. This would be because of the recency of the investigation and the likelihood that it would be relevant to ongoing practices at the provider that the OfS was currently assessing.

128. In all cases, the OfS's decision would depend on the scope and nature of an investigation and its relevance to our assessment of whether to register the provider, as set out in paragraph 121.

129. We are proposing a period of 60 months before the registration application for this information because:

- a. Our initial view is that 60 months provides a reasonable period to assess a provider's historical compliance and governance. Investigations within this time may reveal patterns of behaviour, systemic issues, or recurring concerns that remain relevant to the provider's

existing governance or leadership. These could affect the OfS's risk assessment of whether a provider satisfies the initial conditions of registration and is able to satisfy the ongoing conditions of registration if it is registered.

- b. Our initial view is that 60 months strikes an appropriate balance between us being aware of relevant information and ensuring the information remains relevant and is not overly burdensome. Older investigations may lose relevance as circumstances change (for example, a provider's leadership changes, or it restructures parts of its operations) whereas a shorter timeframe might omit recent relevant events.
- c. Other regulatory bodies often use a five-year threshold as a standard for similar disclosures in balancing fairness with risk management, for example the Financial Conduct Authority, the Charity Commission of England and Wales, and Ofqual.
- d. Our initial view is that 60 months would incentivise ongoing accountability, encouraging providers to maintain robust governance and compliance measures over a sustained period.
- e. The lifecycle of students at a higher education provider can easily span five years, so our preliminary view is that the proposed time frame will help us understand the likely risks to student outcomes at the provider. If a provider faced significant investigations or sanctions five years ago (for example, related to governance, financial mismanagement, or quality assurance), the consequences may still affect current or recent students. For instance, loss of accreditation could affect students' qualifications, even if the issue was later resolved.

130. Our initial view is that there are certain types of investigations that we are more likely to need detailed information about than others. These include, but are not limited to:

- a. **Quality** – investigations by professional, statutory and regulatory bodies (PSRBs) or awarding bodies. Ofsted inspections may be relevant to our assessment of conditions B3 (student outcomes), B7 (quality) and B8 (standards), but this is likely to depend on specific findings. For example, where Ofsted findings relate to a provider's provision at Level 3 or below, we would also need to consider whether these findings had relevance to the provider's higher education provision (at Level 4 or above), including the overall management and governance of the provider.
- b. **Governance** investigations by funding or public bodies, including the Department for Education (DfE) and Student Loans Company (SLC), about the appropriate use of funds. Investigations relating to a provider's governance by the charity commission or the Education and Skills Funding Agency (ESFA). These would be particularly relevant to our assessment of condition D (financial viability and sustainability), and the E conditions (management and governance).
- c. **Finance** – investigations by:
  - i. The Financial Conduct Authority (FCA) relating to concerns about financial management or compliance practices.

- ii. Prudential Regulation Authority (PRA), if the provider is linked to entities involved in banking or financial risk management. Issues flagged by the PRA could affect a provider's financial sustainability.
- iii. The Pensions Regulator (TPR) if a provider operates a pension scheme and is non-compliant with TPR standards, this could indicate financial mismanagement.
- iv. HM Revenue and Customs (HMRC), where investigations or penalties related to tax matters may indicate broader financial or operational governance concerns.
- v. Insolvency Service, for example relating to the conduct of directors or potential corporate abuse.

131. We are also proposing to require information relating to investigations into any of the relevant individuals at the provider. This would include, for example, investigations into tax or other financial probity matters. This is because our initial view is that the outcomes of such investigations may be relevant to our assessment of proposed initial condition E7, in particular, whether relevant individuals at a provider are fit and proper persons.

132. We recognise that investigations may take some time to conclude. If an investigation is ongoing when a provider applies to register, or is ready to apply to register, that provider may be delayed in proceeding with its registration application for reasons which are not, or not fully, within its control. However, where an investigation by another regulatory, statutory, enforcement or public body is relevant to the OfS's assessment, our initial view is that we will generally not be able to make a judgement about that provider's application for registration that is reasonable, accurate and proportionate until the outcomes of the investigation are known. The rationale behind requiring information about the outcome of investigations is rooted in ensuring that the OfS can make fully informed, evidence-based decisions when assessing the regulatory risk posed by a provider. By requiring the outcome of an investigation before making a registration decision, our initial view is that we are acting in the public interest, ensuring that only a provider that meets the required standards is granted registration.

133. It is important to note that there is a specific requirement in the proposed new initial condition E7 relating to investigations with respect to fraud and the inappropriate use of public funds (E7E). In this requirement, we are proposing that any findings that could potentially amount to a relevant fraud offence or inappropriate use of relevant public funds would be likely to result in the provider failing to satisfy initial condition E7E. For this reason, we have proposed that there would be a separate declaration from a provider to confirm whether any findings had been made in relation to a relevant fraud offence or the inappropriate use of relevant public funds. This may overlap with the requirement to submit information about any investigation opened or concluded in the last 60 months, but our initial view is that it is important to be clear and explicit about this type of finding because it may have a direct impact on a provider's prospects of successfully being registered.

134. This proposal would apply to any application for registration submitted after the publication of our decisions following this consultation.

## Alternative options considered

135. In developing this proposal, we considered the following alternative options which are set out in Annex C of Part 3 of this consultation:

- a. continuing the current arrangements
- b. requiring risk-based disclosure
- c. setting narrower requirements
- d. proposing alternative time periods
- e. an alternative to a section 3(5) Notice.

### Question 3a

Do you agree or disagree with the proposal to introduce a requirement for a provider to submit information about historical or current investigations? Please give reasons for your answer.

### Question 3b

Do you think there may be any unintended consequences of adopting this proposal? If so, please explain your answer.

### Question 3c

Do you support any of the alternative options we have set out in Part 3, Annex C, Proposal 3 of this consultation, or do you have any other proposals? If so, please explain and provide reasons for your view.

## Proposal 4: Reporting specified matters that affect an application to register

### What we are proposing

**To introduce a requirement to report to the OfS specified matters that may affect a provider's application to register. This proposal would require a provider, during the application process, to inform the OfS of specific events or changes that could affect our assessment of its application.**

**A provider would be required to provide this information within 28 days of the change or event occurring.**

**The full list of matters we are proposing to include are set out in Table 6 below.**

### Why we are making this proposal

136. The current published timeline for registration, based on a positive assessment, is 46 weeks from the point we confirm an application is complete. During the registration process it is not uncommon for matters to change at a provider while our assessment is underway. Some of these changes may affect our assessment. In many cases the changes are neutral with respect to compliance, that is the provider still meets the initial conditions of registration, but the changed information results in us having to reassess a particular element of the provider's application to ensure that the assessment and recommendations to decision-makers are accurate and relevant. Other changes may negatively affect our assessment. We need to know about changes that are relevant to our assessment of whether a provider meets the initial conditions of registration. The list of matters we require to be reported is an exhaustive list, set out in Table 6 below.
137. Many providers keep the OfS updated about changes to their applications. However, over time situations have arisen during registration assessments where we have become aware of a particular matter but the provider applying for registration has not reported it to us or has not done so in a timely manner.
138. Where a matter has been reported late and has had a material impact on our assessment, we have had to spend further time and resources requesting and reviewing further relevant information and redoing our assessment. If matters had been reported more quickly this would have avoided abortive work. In a small number of cases, important matters have not been reported to us at all and we have subsequently become aware of them through third party notifications. We have had to investigate these before making a registration decision, which has taken considerable time. These situations affect our ability to plan our resources and to deliver assessments to predictable timelines. Sometimes a provider has not made us aware of important matters, which has created a risk that we wrongly assess that it is eligible, or wrongly assess that it satisfies a condition of registration.
139. We have therefore set out a list of matters that we propose must be reported to us during the registration process (see Table 6 below). These matters could all have a material impact on the accuracy of our assessment of a provider's compliance with the initial conditions of

registration or its eligibility for registration. In considering which matters should be included for reporting in this proposal, we have considered real-life examples of situations we have seen in the past as well our current requirements for registered providers to report certain events or matters ('reportable events').<sup>24</sup>

140. There is a different purpose for the information we are proposing to require a provider to report during the registration process. Reportable events are one of several sources of information we use to maintain an up-to-date risk assessment of each registered provider. They are an important component of a risk-based approach to regulation that enables the OfS to focus regulatory attention on those providers that are at greatest risk of breaching their conditions of registration.

141. By contrast, the matters we propose to require a provider to report during the registration process have the primary purpose of ensuring that the provider's registration application remains materially up to date. We do not perform a monitoring function for an unregistered provider, and do not have a regulatory remit to respond to emerging risks for the purposes of directly protecting students at unregistered providers (until and unless we register that provider).

#### Question 4a

Do you agree or disagree with the proposal to require a provider to report to the OfS specified matters that may affect a provider's application to register? Please give reasons for your answer

## Details of the proposal

142. We propose to set out a list of matters that we require a provider applying for registration to report to us during the registration process. The proposed list is set out in Table 6 below.

**Table 6: Proposed list of matters a provider applying for registration must report to the OfS, during the registration process**

Matters that are relevant to the assessment of a provider's legal form and its governance	
Matters to be reported	Purpose
a. Any change to the identity of any 'relevant individual' at the provider	This information is needed as information about a provider's 'relevant individuals' is proposed to be assessed under proposed initial condition E7. The definition of 'relevant individual' is set out in proposed initial condition E7 and is included in the section 3(5) Notice attached as Annex A of Part 3 of this consultation.
b. The legal entity applying for	This information is needed to avoid unnecessary work on a registration application (because the applicant would have ceased to exist).

<sup>24</sup> We explain these requirements in our guidance on reportable events at [Regulatory advice 16: Reportable events](#).

registration ceasing to exist	
c. A merger of the provider with another registered or unregistered higher education provider	This information is needed to ensure the OfS uses up-to-date information about the provider's corporate structure and governance arrangements to conduct its assessment. These are relevant to the OfS's assessment of existing initial condition E2 <sup>25</sup> and proposed initial condition E7.
d. A change to the provider's legal or beneficial ownership	This information is needed to ensure the OfS uses up-to-date information about the provider's ownership, corporate structure and governance arrangements to conduct its assessment. These are considered as part of the assessment of existing initial condition E2 and proposed initial condition E7.
e. A change of control of the provider	This information is needed to ensure the OfS uses up-to-date information about the provider's corporate structure and governance arrangements to conduct its assessment. These are considered as part of the assessment of existing initial condition E2 and proposed initial condition E7. 'Control' is defined in the section 3(5) Notice attached as Annex A.
f. A change in the provider's legal form	This information is needed to ensure the OfS uses up-to-date information about the provider's governance structure to conduct its assessment. A provider's governance structure, including its governing documents, is considered as part of the assessment of existing initial condition E2 and proposed to be assessed as part of proposed initial condition E7.
g. Amendments to the set of governing documents submitted by the provider in connection with its registration application	<p>This information is needed to ensure the OfS uses up-to-date information about the set of governing documents submitted by the provider to conduct its assessment as part of proposed initial condition E7.</p> <p>This requirement is intended to capture any amendment to a governing document that changes its meaning, rather than for example a minor change to update a date or correct typographical errors.</p> <p>A provider's governing documents are considered as part of the assessment of existing initial conditions E1 and E2 and are proposed to be assessed as part of proposed initial condition E7.</p>
h. An acquisition by the provider of another entity	This information is needed because an acquisition of another entity may have a significant impact on a provider's financial position, which will be relevant to the OfS's assessment of initial condition D (financial viability and sustainability). An acquisition may also have an impact on a provider's governance and ownership structure, though this would already be captured in the reporting requirements above.
i. A notification to the provider of the opening of an investigation of the provider or any Relevant Individual at	This information is needed because the initiation of a new investigation by another body may impact on the OfS's assessment of a number of initial conditions. The reasons for requiring this information, and the way that the OfS proposes to use this information, are set out in more detail in Proposal 3 of Part 3 of this consultation.

<sup>25</sup> This consultation proposes to revoke initial condition E2 if the proposed initial condition E7 is adopted following the outcome of this consultation. Should the outcome of this consultation determine that proposed initial E7 is not adopted, then initial condition E2 would remain and Proposal 4 (if adopted) would apply to existing initial condition E2.

<p>the provider by, or on behalf of, any awarding organisation, awarding body, professional body, regulatory body, funding body, statutory body, enforcement body, public body or other higher education provider. (This includes but is not limited to any notification to the provider that a third party is investigating the provider in relation to a possible fraud, financial irregularity or the inappropriate use of public funds, or that a third party has made a finding that the provider has committed fraud)</p>	
---	--

<b>Matters that are relevant to a provider's provision of higher education, either alone or in partnership</b>	
<b>Matters to be reported</b>	<b>Purpose</b>
<p>a. The provider resolving to cease carrying on its business principally in England</p>	<p>This information is needed to ensure the OfS's assessment of a provider's eligibility is up to date, and to avoid unnecessary work on a registration application (because the applicant may have ceased to be eligible for registration).</p>
<p>b. The provider resolving to fully or substantially cease providing higher education, or if it was applying for registration as a provider in prospect, resolving to no longer provide higher education in future</p>	<p>This information is needed to ensure the OfS's assessment of a provider's eligibility is up to date, and to avoid unnecessary work on a registration application (because the applicant may have ceased to be eligible for registration).</p>
<p>c. A notification to the provider that its awarding organisation or awarding body is to</p>	<p>This information is needed to ensure the OfS's quality and standards assessment is based on up-to-date information. In these circumstances a provider may need to change and resubmit its quality plan or withdraw from the assessment process while it seeks new awarding arrangements.</p>

withdraw from its arrangement	
d. Termination of a partnership arrangement, whether in the UK or internationally. Establishment of a new partnership arrangement, whether in the UK or internationally	This information is needed to ensure the OfS's quality and standards assessment is based on up-to-date information. Changes in partnership arrangements may also impact on the provider's financial position and the OfS's assessment of initial condition D (financial viability and sustainability).

<b>Matters that are relevant to a provider's financial viability and sustainability</b>	
<b>Matters to be reported</b>	<b>Purpose</b>
a. For a provider with a legally binding obligation of, or which otherwise receives, financial support underpinning its financial viability and sustainability, the withdrawal of the obligation or that financial support (including as a result of a change of ownership or control of the provider, even where the new owner will offer a similar obligation or financial support), or an adverse change in the counterparty's financial position or other standing that could affect its suitability as a counterparty	<p>This information is needed as it is likely to materially impact on the OfS's assessment of the provider's financial viability and sustainability (condition D).</p> <p>If the OfS did not find out this information until later in the application process we may incorrectly assess a provider as meeting condition D, on the basis it had financial support, but did not inform us when that financial support changed, resulting in higher regulatory risk, and potential for adverse outcomes for students.</p>
b. Any notification from a provider's external auditor that it has concluded that the provider is not a going concern, or any assessment by the provider's trustees or directors that the	<p>This information is needed as it is likely to immediately materially impact on the provider's financial position and the OfS's assessment of its financial viability and sustainability (condition D).</p> <p>If the OfS did not find out this information until later in the application process, we may incorrectly assess a provider as meeting condition D, resulting in higher regulatory risk, and potential for adverse outcomes for students.</p>

provider is not a going concern	
---------------------------------	--

#### Question 4b

We would welcome views on the list of specified matters set out in Table 6. Are there other specified matters you think should be included, or matters listed that should be excluded? Please give reasons for your answer.

143. We have proposed that a provider must report these matters to us within 28 days of it becoming aware of the event occurring. Our initial view is that this period strikes an appropriate balance; it supports the OfS's need to use its resources in an efficient and effective way and assess a provider's application based on up-to-date, relevant information, but does not require reporting as quickly as is required for a registered provider because, as explained above, the purpose of reporting these matters is different. In practice, we would encourage a provider to report any of these matters to us as soon as possible as it will be in its interests that we have the correct information for our assessment without delay.

#### Question 4c

Do you agree or disagree with the proposed reporting deadline of 28 days for all the specific matters proposed to be reported to the OfS? Please give reasons for your answer.

144. We propose that the requirement to submit information relating to specific matters that may arise during the registration assessment process would apply to any new application for registration made after publication of our decisions following this consultation.

145. We propose that these requirements would not routinely apply to applications from a registered provider to change its category of registration as it will already be subject to the OfS's reportable events requirements. However, if we consider it necessary, we may include some of these requirements in any bespoke section 3(5) Notice we issue setting out the information that a provider is required to submit as part of its application to change category of registration.

146. The proposals will require a provider to submit information about things that happen during the registration process. A provider will be required to submit information about these matters even if the matter has been resolved by the time the provider reports it; the provider can clarify any steps it has taken in response to the matter and, where appropriate, any resolution of the matter in its report. We propose that the notification should simply include the fact that a matter has occurred, rather than requiring additional information about it. While a provider is encouraged to provide contextual information, we can ask follow-up questions and seek clarification in writing if needed, once we are aware a matter has occurred.

147. We consider that this will keep the burden for the provider to the minimum necessary. Collating and submitting information if any of these events occur should be relatively quick and straightforward for any provider.

148. The proposed mechanism to impose this requirement is part of the section 3(5) notice set out in Proposal 1 of Part 3 of this consultation. The impact of imposing a requirement via a section 3(5) Notice is that we may refuse a provider's registration application if it does not submit the required information (the proposed section 3(5) Notice is set out in Annex A of Part 3 of this consultation).
149. As set out above in Proposal 1,<sup>26</sup> if a listed matter occurs during the registration process and a provider does not report it within 28-days and the OfS subsequently becomes aware of it, we may provisionally refuse the provider's application for registration on the basis that it has not complied with our requirements for an application.
150. We consider that requiring a provider to report a specific set of matters during the registration process ensures our assessment is based on the most current information. This approach has clear benefits, as it enhances our understanding of a provider's application and may reduce the need for additional queries or the imposition of specific conditions at the point of registration. Promptly receiving updated information allows us to evaluate its impact on our assessment within the overall assessment timelines, minimising delays. It also lowers the risk of making decisions based on outdated information, such as incorrectly registering a provider or concluding that a provider meets an initial condition of registration.
151. In setting out clear scenarios in which we require a provider to report matters promptly, we aim to reduce the need for it to spend time considering and debating the type of matters to report and when this should happen, thereby reducing burden.

## Alternative options considered

152. We have considered alternative options to the proposal set out above. These are listed below and set out in Annex C of Part 3 of this consultation:
- a. continuing the current arrangements
  - b. proposing a requirement for a provider to keep its application substantively or materially up to date
  - c. proposing shorter reporting timeframes.

### Question 4d

Do you think there may be any unintended consequences of adopting this proposal? If so, please explain your answer.

### Question 4e

Do you support any of the alternative approaches we have outlined in Part 3, Annex C, Proposal 4 of this consultation, or do you have any other proposals? If so, please explain and provide reasons for your view.

---

<sup>26</sup> Paragraph 31.

## Proposal 5: Fixed-term resubmission restriction for registration refusals

### What we are proposing

We propose that a provider that receives a final decision by the OfS to refuse registration will not be able to submit another application for registration in any category for a minimum period of 18 months. We propose that this would be achieved through defining the 'manner' of a registration application in a Notice issued under section 3(5) of HERA setting out the requirements for a registration application.

### Why we are making this proposal

153. As set out in paragraph 6, we encounter the following issues during our assessment of providers' registration applications:

- a. Some providers fail to submit a complete application, or an application of sufficient quality, to enable us to undertake our assessment, in some cases due to a general failure to engage with the guidance available.
- b. Following closure of a provider's application, the provider immediately or shortly afterward resubmits the same application without having addressed the weaknesses in the original application.

154. Around 40 per cent of registration applications do not comply with the requirements set out in our registration guidance when they are initially submitted.

155. Registration applications that do not follow the registration guidance and are poorly prepared adversely affect our efficiency. We find that where we have closed a provider's application because it is incomplete, in some cases the provider resubmits an application quickly, without addressing the weaknesses we had identified (and often the amount of work required for it to address these weaknesses is significant). This means we are using our resources to assess poorly prepared applications multiple times.

156. Where we refuse registration because an application did not meet one or more initial condition of registration, we generally find that a provider needs to make substantial changes to address the concerns we have raised before it is ready to resubmit. In our experience, providers in this situation do not usually attempt to apply for registration again quickly.

157. Our aim is to incentivise any provider seeking OfS registration to submit an application that is well prepared and that contains all the information we require at the first time of applying. We also aim to prioritise our resources on providers that submit applications that fulfil our requirements and minimise the amount of time we spend on those that do not. We think that imposing a restriction on submitting a registration application following refusal will mean we can achieve these aims.

158. We have considered the appropriate length of time for this proposed restriction. Our initial thinking is that a timeframe of 18 months is appropriate because it balances considerations of regulatory efficiency and fairness in the following ways:

- a. An 18-month period gives a provider time for meaningful improvement to address the deficiencies in its previous registration application. It allows time for the provider to amend its documentation with the new processes or arrangements it is adopting. It can also implement the changes in practice and demonstrate that they are effective and, for a provider that is already delivering higher education, that it has sustained them over a period.
- b. An 18-month period would in most cases (even allowing for some delay) be sufficient time for the OfS to complete its assessment of any other registration applications submitted around the time that the provider was refused registration. We would therefore complete these other assessments before the provider we had refused registration could submit a new application. We think that it is fairest to assess and complete applications from providers that comply with our requirements the first time they apply before we assess applications from providers that did not.

159. In making this proposal, we have placed particular weight on the efficient, effective and economic use of the OfS's resources.

160. We think that this proposal also encourages competition to access the regulated sector that is in the interests of students. In our experience, providers that invest time in understanding regulatory requirements, and that commit the resources necessary to comply, operate more effectively when they become registered than those providers that do not. We wish to facilitate access to the regulated sector for these providers.

## **Details of the proposal**

161. If we decide to adopt this proposal, we would issue a notice according to section 3(5) of HERA that set out the definition of the 'manner' of a provider's application. The definition of 'manner' would be: 'An application may not be submitted within 18 months of receiving notification of a final decision from the OfS to refuse registration to the applicant or an applicant that is either the same entity or a new entity operating substantially the same higher education business as the previous entity'. This would mean a provider's application would only be able to satisfy the section 3(5) requirements if it were submitted at least 18 months after the date of any final decision by the OfS to refuse registration to that provider.

162. The effect of this proposal on an unregistered provider would be that it would be unable to reapply for OfS registration until, at the earliest, 18 months after receiving a final decision to refuse registration. We propose that this restriction would apply to a provider that receives any final decision to refuse registration, whether that decision is because the provider had not complied with the proposed submission requirements or had not satisfied one or more initial conditions of registration.

163. We have considered the potential negative impacts of this proposal on a provider that would be temporarily unable to reapply. This proposal could have negative consequences for a provider that had been hoping to access specific benefits of registration by a particular date. This could also negatively affect prospective students who may plan to enrol at the provider if

it secures registration within a certain timeframe. However, our initial view is that these potential impacts need to be balanced against the fact that if an application has been rejected, a provider will need to undertake work to fix the issue(s) that caused the rejection and that this is likely to take time. If this is not done effectively, any new application may result in another refusal of registration.

164. We propose that the OfS would consider procedural exceptions to this requirement. Some non-exhaustive examples are as follows:

- a. An issue which led to the refusal was due to a OfS technical or IT issue which had not been identified during the 28-day representations period.
- b. The OfS refused registration to a provider because it had not submitted information that was temporarily unavailable due to a situation beyond the provider's control but which has become available again.

165. However, our proposal is that we would be less likely to consider an exception based on an argument that this restriction could result in detriment to a provider because it would delay its ability to apply to be registered.

166. We accept that it is the case that a provider will not be able to apply to be registered for a specific period (that is the proposal). However, our initial view is that the benefits of this proposal in incentivising a provider to prepare carefully for the registration assessment and submit a complete application when first applying, outweigh the negative impacts it may have, particularly given that the negative impacts would only be experienced by a provider that did not meet the OfS's requirements for registration and not by a provider that did.

167. Our initial view is that our proposal will overall have a positive impact on the sector. All providers seeking OfS registration would be incentivised to engage carefully with the OfS's regulatory requirements and application requirements and submit well-prepared applications on the first time of applying to avoid the proposed resubmission restriction. We think this will protect OfS resources to focus on registration applications that have been well prepared and follow the registration requirements and allow us to complete assessments on average more quickly than we can currently. Our initial view is that this would help facilitate entry to the regulated sector for those providers that are ready and able to comply with our requirements. This supports our strategic goals in relation to student choice<sup>27</sup> where prospective students can choose from a diverse range of courses and providers.

### **Which providers would this proposal apply to?**

168. If we decide to adopt this proposal (with or without amendments) we propose that it would come into effect on 1 January 2026. This is later than the date we are proposing to adopt for the other proposals in this consultation.

169. The proposed restriction would apply to any new registration applications made on or after 1 January 2026, where the application on the basis of which the OfS made the final decision to refuse registration was also made on or after 1 January 2026. This means that only a

---

<sup>27</sup> See [The OfS strategy](#).

registration application that was submitted after 1 January 2026 and that was subsequently refused would trigger the restriction on the provider reapplying.

170. We are proposing a later date because of the more significant impact it would have alongside the other proposals in this consultation and to avoid potential unintended consequences of implementing the proposals at the same time. Our initial view is that:

- a. The proposed 18-month resubmission restriction represents a procedural change with potentially significant consequences for providers. By deferring the implementation of this proposal, the OfS could ensure that providers have time to fully understand the implications of the restriction, before submitting any application.
- b. We are proposing a number of other changes in this consultation, including new initial conditions and new requirements for the information a provider would submit with its registration application. Our initial view is that it is important that providers have time to become familiar with any other changes that we adopt before this consequence of submitting an application that does not meet our requirements comes into effect.
- c. Delaying the implementation of this proposal will enable the OfS to ensure that any other new registration requirements are having the intended effect and producing no unintended consequences before this consequence comes into effect. If there were any emerging issues with the registration application process or providers being able to comply with our requirements within the first few months of any new requirements we adopt, we would also have the opportunity to reconsider or further delay the implementation of this proposal.
- d. We know that a number of providers may have been ready to apply for registration but have not been able to do so since December 2024 when we temporarily paused accepting new applications. If any of these providers wished to apply shortly after this consultation concludes, we think that implementing this proposal later will mean they are not disproportionately affected by a potential lack of familiarity with the new requirements.

171. Where a provider seeking registration is operating substantially the same higher education business as a previous entity that received a final decision to refuse registration, we propose that we would take into account the decision to refuse registration to the previous entity and apply the resubmission restriction to the (new) provider seeking registration. This approach is designed to ensure that a provider that receives a final decision to refuse registration cannot simply evade the resubmission restriction by, for example, changing the name of the entity that was refused registration. We set out further detail in this consultation at Part 2, Annex G proposed condition E7E and related guidance about the factors we would be likely to consider in determining whether a provider is, in our view, operating substantially the same higher education business as a previous entity if we were to implement this proposal.

172. The proposal would not affect a registered provider that wishes to submit an application to change its category of registration or because a proposed acquisition or restructuring of its business will change its legal form. This is because a provider in these circumstances would have received a positive registration decision in connection with its previous application, not a negative decision.

173. We propose that the resubmission restriction period would not apply to a provider that withdraws from the registration application process before the OfS has made a decision about its application. This is because we recognise that there are circumstances in which a provider's application may need to materially change, or where a provider may reconsider whether and when it wants to be registered, not owing to any previous failure to engage with the registration requirements. We wish to encourage a provider to recognise such circumstances itself and take proactive steps to manage its application, including withdrawing from the process where appropriate, without penalty.

174. We have considered whether not imposing a resubmission restriction period for an application that has been withdrawn may risk a provider resubmitting the same, potentially poor-quality application within a short period. Our initial view is that this risk could be mitigated by taking into account a provider's circumstances and any previous applications when considering any request to withdraw an application. This would include any past pattern of submitting and then withdrawing registration applications and providing clear communication about how we would expect any future submission to meet our application requirements.

## Alternative options considered

175. In developing our approach to introducing a resubmission restriction period, we considered alternative options. These are listed below and set out in Annex C of Part 3 of this consultation:

- a. proposing alternative lengths of resubmission restriction
- b. allowing additional flexibility
- c. proposing differentiated resubmission restriction periods
- d. proposing a new initial condition of registration to restrict when providers could submit a new application.

### Question 5a

Do you agree or disagree with the proposal to apply a resubmission restriction period to a provider with an application that was previously refused? Please give reasons for your answer.

### Question 5b

Is there any other impact of this proposal or potential unintended consequences that we have not considered? If yes, please explain and provide reasons for your view.

### Question 5c

Do you agree or disagree with the proposal that the time frame for the resubmission restriction period is 18 months? Please explain and provide a reason for your view.

**Question 5d**

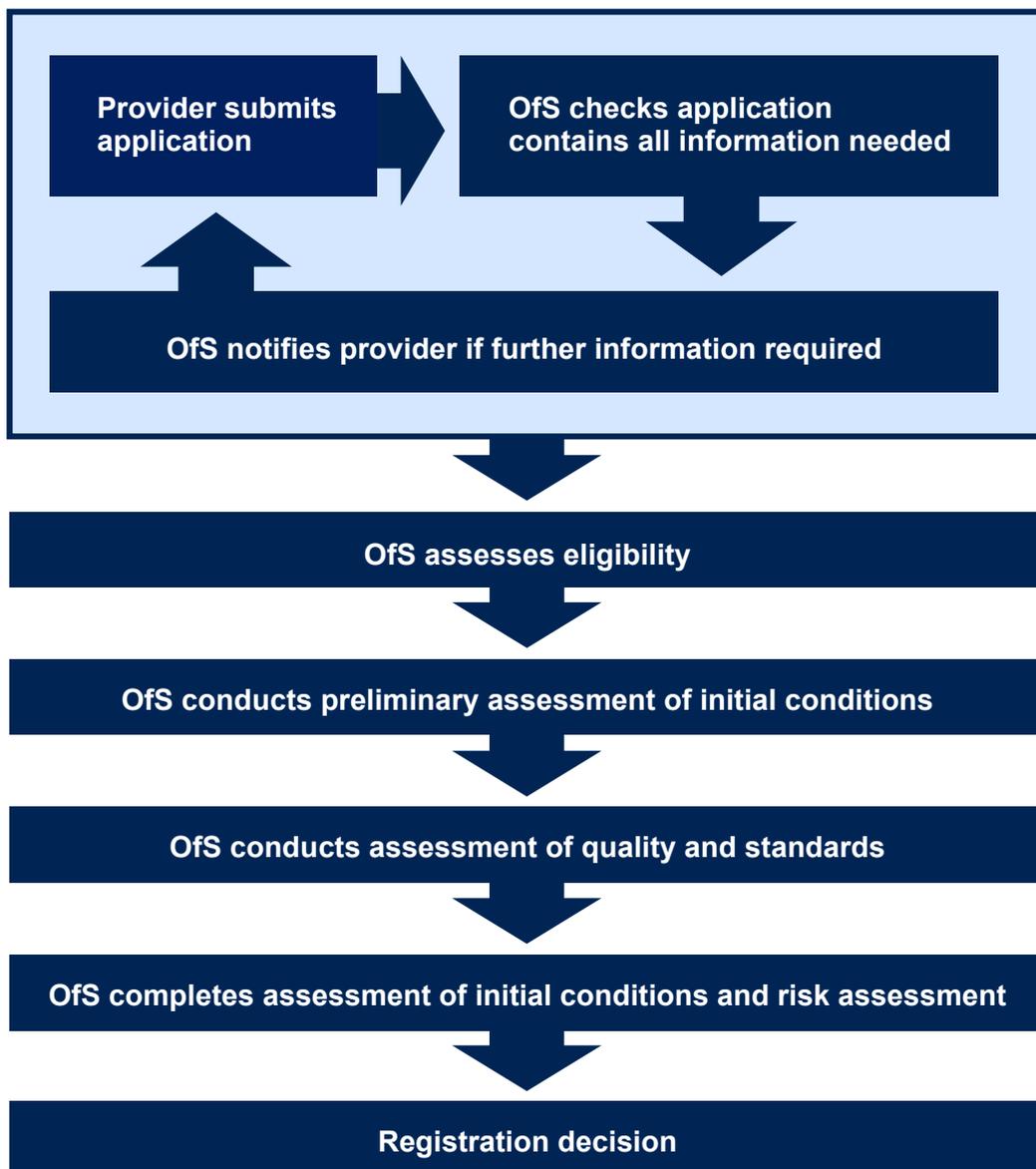
Do you support any of the alternative options we have outlined in Part 3, Annex C, Proposal 5 of this consultation, or do you have any other proposals? If so, please explain and provide reasons for your view.

**Question 5e**

We are interested in respondents' views on a 12-month resubmission restriction. Do you think this is a better option than the proposed 18-month resubmission restriction? Please explain and provide reasons for your view.

## Impact of proposals on registration assessment processes and timelines

176. Currently the main steps in the registration process, when it results in a positive decision to register a provider, are described in 'Regulatory advice 3: registration of English higher education providers with the OfS'.<sup>28</sup> These are set out below. Where the OfS takes a provisional decision to refuse registration, there are further steps in the process which are not set out here.



177. Currently we advise that the time it will take to complete each of these steps and reach a final registration decision depends on a number of factors. This means we cannot give a precise

<sup>28</sup>See [Regulatory advice 3: Registration of English higher education providers with the OfS](#).

timescale for assessment for each provider. How quickly we can assess an application depends on whether:

- a. All the information we need to assess the application against the initial conditions of registration is received in the first submission and responses to any questions or requests for further information are meaningful and received by the deadlines we set.
- b. The provider is ready for a visit as part of the assessment of condition B7, if one is required.
- c. The provider is ready to submit the information required for an assessment of standards for condition B8 as soon as we request this.
- d. Our assessment will be extended where we identify complex issues which need to be resolved during the assessment process before a decision can be made.
- e. Our assessment identifies areas of concern that result in a provisional decision to refuse registration.

178. The proposals in this consultation primarily affect the first stage in the process set out in the diagram in paragraph 176 above. Currently the first stage allows for a provider to take up to three months to make a complete application after its initial submission. If the submission is not complete after this stage, we write to the provider to advise that we will not take its application any further.

179. Under the consultation proposals this first stage would effectively be replaced by the implementation of the section 3(5) Notice determining the submission requirements (Proposal 1). The preliminary stage of the registration process would be an assessment of whether a provider's application had complied with the notice. If a provider's initial application did not comply, we would move to a provisional refusal decision instead of a three-month process to rectify the submission. The provisional refusal decision would clearly set out the reasons the provider's application did not comply with the requirements of the notice. As described above, the provider would be able to submit any missing information as part of the representations process for this decision. If this still did not meet the submission requirements, we would then take a final decision to refuse registration.

180. Once the assessment stage is reached, we anticipate that timeframes would remain broadly similar although will be somewhat more consistent as the initial submission should be of a higher quality in all cases.

181. During the assessment stage we write to a provider to advise it that the assessment is ready to progress to a quality and standards assessment and issue an invoice for payment for this. According to the proposed section 3(5) Notice, a provider would be required to provide evidence of this payment if requested.

182. We also issue a request for any further evidence required for the assessment of initial condition B8. According to the proposed section 3(5) Notice, the provider would be required to respond to these requests by the deadline we set. If we did not receive the information requested, we would take a decision to refuse the application on the basis that the provider had not complied with the notice, as described in Proposal 1, paragraph 31.

183. During the quality and standards assessment, we would ask a provider to submit updated financial information to coincide with the end of the quality and standards assessment. A provider would also be expected to submit new audited financial statements as they become available, as set out in Proposal 2c. We would then assess all up-to-date financial information to allow us to reach a decision promptly as to whether to register the provider, once the quality and standards assessment was complete. This information request would also fall within the requirements of the section 3(5) Notice and therefore failure to provide it would lead to a decision to refuse registration on the basis that the provider had not complied with the notice.
184. Once an application for registration is made under the new proposals, a provider would be expected to report any of the matters arising, as set out in Proposal 4, until a final decision is made about its application. Should we find that a provider has not reported matters as specified this would be considered a failure to comply with the section 3(5) Notice, and we would therefore take a decision to refuse the application on the basis that the provider had not complied with the notice. This applies at any time during the assessment period, including where we have issued a provisional decision.

#### **Question 6**

Do you have any comments about the impact outlined above that the proposals in Part 3 of this consultation may have on the timeline for a registration assessment?

### **Other questions about this consultation**

#### **Question 7**

Do you foresee any unintended consequences resulting from the proposals in Part 3 of this consultation? If so, please indicate what you think these are and the reasons for your view.

#### **Question 8**

Are there any aspects of these proposals you found unclear? If so, please specify which, and tell us why.

#### **Question 9**

In your view, are there ways in which the objectives discussed in Part 3 of this consultation could be delivered more efficiently or effectively than proposed here?

#### **Question 10**

Do you have any comments about the potential impact of these proposals on individuals on the basis of their protected characteristics?

# Annex A: Proposed notice under section 3(5) of HERA

**Proposed Notice under Section 3(5) of the Higher Education and Research Act 2017. The manner and form of an application for Office for Students (“OfS”) registration and the information to be contained in it or provided with it.**

Whereas:

- A. For the purpose of assisting the OfS in performing any function, or exercising any power, conferred under any legislation, the OfS has the power under section 3(5) of the Higher Education and Research Act (HERA) 2017 to determine:

‘(a) the form of an application for registration in the register (or in a particular part of the register),

(b) the information to be contained in it or provided with it, and

(c) the manner in which an application is to be submitted.’

- B. The OfS has functions which include (but are not limited to) maintaining a register of English higher education providers and assessing registration applications in accordance with section 3(3) of HERA. The OfS must establish and maintain a register (section 3(1) of HERA); the OfS must determine and publish initial registration conditions (section 5(1) of HERA); and the OfS must register an institution if it complies with section 3(3) of HERA.

Therefore:

- C. Under section 3(5) of the Higher Education and Research Act 2017, any provider that wishes to submit an application for registration in the OfS register is required to provide to the OfS or any person nominated by the OfS, the Specified Information in the Specified Time and in the Specified Manner as set out in Schedule 1 of this Notice, and

- D. The information contained in the application or provided with it must be accurate.

Definitions

1. **“Specified Information”** means the information set out in the column “Specified Information” of the table at Schedule 1 of this Notice and in accordance with clause D of this notice.
2. **“Specified Time”** means the deadline for provision of the Specified Information as set out in the column ‘Specified Time’ of the table at Schedule 1 of this notice.
3. **“Specified Manner”** means that the Specified Information must be provided to the OfS or any person nominated by the OfS in the manner set out in the column “Specified Manner” of the table at Schedule 1 of this notice.
4. **“Relevant Individual”** means all of the following:
  - a. any member of the provider’s **governing body**;
  - b. the individual proposed as the accountable officer for the purposes of ongoing condition E3;

- c. the individual(s) proposed to hold overarching responsibility for the management of the provider's financial affairs;
  - d. any **company director** of the provider;
  - e. any **company secretary** of the provider;
  - f. any individual who holds more than 25 per cent of the shares in the provider;
  - g. where the provider has a parent company, any individual who holds more than 25 per cent of the shares in that parent company; and
  - h. any individual who would have significant overarching responsibility for ensuring that the provider complies with the ongoing conditions of registration (if registered).
5. **“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 coordinated 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.

## Schedule 1 Part A

Element of registration	Providers this is applicable to	Specified information	Specified time	Specified manner	Reference to consultation proposal <sup>29</sup>	
General	All providers	The OfS's registration application form which includes the following sections:	To be submitted with application	Via the OfS Portal	This is a current requirement as set out in Annex C of Regulatory advice 3 <sup>30</sup>	
		Provider details				
		Application details				
		Corporate information				
		Subcontractual arrangements				
		Validation arrangements				
		Key individuals				This section may be amended in response to this consultation
		Shareholders				This section may be amended in response to this consultation
Additional directors and trustees	This section may be amended in response to this consultation					

<sup>29</sup> This column has been added to the proposed draft notice to refer consultation respondents to the relevant proposal in the consultation document. Where the element of registration is not part of a proposed change, reference is made to the relevant regulatory framework paragraph and regulatory advice and guidance.

<sup>30</sup> See [Regulatory advice 3: Registration of English higher education providers with the OfS](#).

Element of registration	Providers this is applicable to	Specified information	Specified time	Specified manner	Reference to consultation proposal <sup>29</sup>
Use of sensitive term 'University' or 'University College'	Any provider proposing to be registered with a name containing 'University' or 'University college' in its business, or trading, name, under the Companies Act are sensitive terms	A letter of non-objection from the Department for Education to use of this sensitive term in the provider's business/trading name <sup>31</sup>	To be submitted with application	Via the OfS Portal	This is a current requirement as set out in Annex C of Regulatory advice 3
General	All providers	<p>A diagram showing the provider's corporate structure and ownership. The diagram should:</p> <ul style="list-style-type: none"> <li>include all legal and beneficial owners of the provider (direct and indirect) including the ultimate beneficial owner, whether individuals or corporate entities</li> <li>include any trusts with ownership interests (direct or indirect) in the provider together with an explanation of what ownership interests the trust has and the nature of the trust, including whether it is owned by any other legal or natural person and who its beneficiaries are</li> <li>illustrate the provider's position alongside its parent and subsidiary undertakings (where it has these), as defined by the Companies Act 2006</li> <li>include other entities that fall under a common parent undertaking to the provider applying to be registered</li> </ul>	To be submitted with application	Via the OfS Portal	<b>Part 3: Proposal 2d</b> (diagram showing corporate structure and ownership)

<sup>31</sup> The process for seeking this letter is as described in government guidance, [Use of university, polytechnic and higher education in business and company names \(other than for university and university college title\) - GOV.UK](#).

Element of registration	Providers this is applicable to	Specified information	Specified time	Specified manner	Reference to consultation proposal <sup>29</sup>
		<ul style="list-style-type: none"> <li>illustrate the relationship between all individuals and entities shown</li> </ul>			
General	All providers	<ul style="list-style-type: none"> <li>A completed investigations declaration form (Appendix 4)</li> </ul>	To be submitted with application	Via the OfS Portal	<b>Part 3: Proposal 3 (historical and current investigations)</b>
A1	Providers applying in the Approved (fee cap) category that will, if OfS registration is granted, have students on courses subject to the regulated undergraduate tuition fee regime and intending to charge higher fees	<ul style="list-style-type: none"> <li>An access and participation plan that meets the requirements set out in OfS Regulatory notice 1<sup>32</sup></li> <li>Supporting information about fees, targets and investment as set out in OfS Regulatory notice 1</li> </ul>	To be submitted with application	Via the OfS Portal	This is a current requirement as set out in Annex C of Regulatory advice 3
A2	Providers applying in the Approved (fee cap) category and intending to charge basic fees <b>and</b> Providers in the Approved category	<ul style="list-style-type: none"> <li>An access and participation statement and a link to where this is published</li> </ul>	To be submitted with application	Via the OfS Portal	This is a current requirement as set out in Annex C of Regulatory advice 3
B7	All providers	<ul style="list-style-type: none"> <li>A quality plan which explains for each of the requirements in conditions B1, B2 and B4 what the provider's plans and processes are for achieving compliance with each requirement, and any evidence which it considers demonstrates</li> </ul>	To be submitted with application	Via the OfS Portal	This is a current requirement as set out in Annex C of Regulatory advice 3

<sup>32</sup> See [Regulatory notice 1: Access and participation plan guidance](#).

Element of registration	Providers this is applicable to	Specified information	Specified time	Specified manner	Reference to consultation proposal <sup>29</sup>
		<p>compliance with the requirements set out in Annex H of Regulatory advice 3<sup>33</sup></p> <ul style="list-style-type: none"> <li>Detailed supporting evidence as set out in Annex H of Regulatory advice 3<sup>34</sup></li> <li>An itemised list of each piece of supporting evidence submitted as set out in Annex H of Regulatory advice 3<sup>35</sup></li> </ul>			
B8	All providers	<ul style="list-style-type: none"> <li>Provider information form in the template provided at Annex J of Regulatory advice 3<sup>36</sup></li> </ul>	To be submitted with application	Via the OfS Portal	This is a current requirement as set out in Annex C of Regulatory advice 3
B8	All providers	<ul style="list-style-type: none"> <li>Final or draft course documentation which will be determined from the information submitted by the provider in the provider information form on the template in Annex J of Regulatory advice 3<sup>37</sup></li> <li>Where a provider has delivered or is delivering courses that are intended to be provided if registered, and there is evidence of student achievement in relation to those courses, evidence of student achievement in assessed work</li> </ul>	This information will be requested by the OfS when the provider is referred for a quality and standards assessment. The OfS will write to the provider to advise what information should be submitted This	Via the OfS Portal	This is a current requirement as set out in Annex C of Regulatory advice 3

<sup>33</sup> See [Regulatory advice 3: Registration of English higher education providers with the OfS](#).

<sup>34</sup> See [Regulatory advice 3: Registration of English higher education providers with the OfS](#).

<sup>35</sup> See [Regulatory advice 3: Registration of English higher education providers with the OfS](#).

<sup>36</sup> See B8 provider template at: [Regulatory advice 3: Registration of English higher education providers with the OfS](#).

<sup>37</sup> See B8 provider template at: [Regulatory advice 3: Registration of English higher education providers with the OfS](#).

Element of registration	Providers this is applicable to	Specified information	Specified time	Specified manner	Reference to consultation proposal <sup>29</sup>
		and associated records of this achievement should be submitted as described in Annex I of Regulatory advice 3	information is to be submitted within five working days of the OfS's request		
B7, B8	Any provider that is referred for a quality and standards assessment as part of the assessment of its registration application	<ul style="list-style-type: none"> <li>• Proof of payment, by the agreed deadline, of the fee for the OfS's quality and standards assessment</li> </ul>	<p>Providers will need to provide this when referred for a quality and standards assessment. The OfS will write to the provider to confirm when it requires this.</p> <p>Proof of payment It is to be submitted within ten working days of the OfS's request</p>	Via the OfS Portal	<b>New requirement.</b> If a provider does not pay for a quality and standards assessment (if it is referred for one) the OfS cannot proceed with its assessment and may therefore refuse registration
C5 (subject to adopting the proposals in this consultation relating to condition C5)	All providers	<ul style="list-style-type: none"> <li>• Template contract(s) that set out terms and conditions for the provision of higher education. This must include all of the following that apply to the provider's circumstances: <ul style="list-style-type: none"> <li>○ template contract(s) between the provider and any students it will teach;</li> <li>○ template contract(s) between other parties and any students</li> </ul> </li> </ul>	To be submitted with application	Via the OfS Portal	<b>Part 1: Proposal 6 (treating students fairly)</b>

Element of registration	Providers this is applicable to	Specified information	Specified time	Specified manner	Reference to consultation proposal <sup>29</sup>
		<p>the provider will teach. This includes:</p> <ul style="list-style-type: none"> <li>▪ template contract(s) between students the provider will teach and any other higher education provider, where the provider seeking registration is delivering higher education on behalf of that provider (for example, through a subcontractual arrangement);</li> <li>▪ relevant extracts of template contracts between apprentice students and their employer where there are specific terms and conditions related to the higher education that will be delivered by the provider seeking registration.</li> </ul> <ul style="list-style-type: none"> <li>○ template contract(s) between the provider and any students that will be taught by another party on the provider's behalf;</li> <li>○ template contract(s) between other parties and students that will be taught by those parties on the provider's behalf.</li> </ul>			

Element of registration	Providers this is applicable to	Specified information	Specified time	Specified manner	Reference to consultation proposal <sup>29</sup>
		<p>These template contracts must include terms related to any tuition fees payable and any additional costs that may apply (including but not limited to additional fees to re-sit exams).</p> <ul style="list-style-type: none"> <li>• Any template contracts (including terms and conditions) between a student and the provider for the following ancillary services or facilities (where the provider offers these and there is a separate contract that students are required to sign): <ul style="list-style-type: none"> <li>○ library services</li> <li>○ disability support packages</li> <li>○ scholarships</li> <li>○ accommodation</li> <li>○ sports facilities</li> </ul> </li> <li>• Any policy (or policies) relating to the circumstances in which the provider may make changes to: <ul style="list-style-type: none"> <li>○ courses (including changes to material components or content of a course, changes to subjects offered and course closure)</li> <li>○ qualifications to be awarded (including circumstances where a validating partner has withdrawn validation)</li> <li>○ modes of study (including full-time, part-time, online and hybrid provision, and including measures to address the needs of specific student groups, including accessibility needs)</li> </ul> </li> </ul>			

Element of registration	Providers this is applicable to	Specified information	Specified time	Specified manner	Reference to consultation proposal <sup>29</sup>
		<ul style="list-style-type: none"> <li>○ teaching location and facilities (including closure of a campus, building or other facilities, and including measures to address the needs of specific student groups, including accessibility needs)</li> <li>○ course fees and other related fees or charges (for example, additional fees to re-sit exams)</li> <li>● Complaints process(es) related to the provision of higher education - where there are different processes for different categories of student, all must be submitted</li> <li>● Any policy (or policies) that set out the terms for refund and compensation for higher education students</li> <li>● A completed initial condition C5 declaration form (see Appendix 1)</li> <li>● A completed initial condition C5 submission checklist (see Appendix 2)</li> </ul>			
D	All providers	<ul style="list-style-type: none"> <li>● Financial and student number tables in the template provided by the OfS which must be completed in compliance with the OfS guidance for providers about the financial information required for registration<sup>38</sup></li> </ul>	To be submitted with application	Via the OfS Portal	This is a current requirement as set out in Regulatory advice 3 and 'Guidance for providers

<sup>38</sup> See 'Guidance for providers about the financial information required for registration' at [Regulatory advice 3: Registration of English higher education providers with the OfS](#).

Element of registration	Providers this is applicable to	Specified information	Specified time	Specified manner	Reference to consultation proposal <sup>29</sup>
		<ul style="list-style-type: none"> <li>Detailed commentary to accompany the financial and student number tables to explain the data you have provided which must be completed in compliance with the OfS guidance for providers about the financial information required for registration<sup>39</sup></li> <li>If financial support is being guaranteed to the provider by a third party, a legally binding obligation of financial support from that third party that meets the requirements set out in paragraphs 403 to 407 of the OfS's regulatory framework<sup>40</sup> and audited financial statements for the previous three years for that third party</li> </ul>			about financial information required for registration'
D	All providers	<ul style="list-style-type: none"> <li>Financial scenario planning, accompanying commentary and mitigating actions (in a template that will be provided by the OfS specifying the scenarios to be planned for subject to the outcomes of this consultation)</li> </ul>	To be submitted with application	Via the OfS Portal	<b>Part 3: proposal 2a (financial scenario planning)</b>
D	All providers	<ul style="list-style-type: none"> <li>Updated financial and student number tables in the template provided by the OfS which must be completed in compliance with the OfS guidance for</li> </ul>	A provider will need to submit this information once the quality and standards	Via the OfS Portal	<b>Part 3: proposal 2b (updated financial and student numbers table)</b>

<sup>39</sup> See Guidance for providers about the financial information required for registration' at [Regulatory advice 3: Registration of English higher education providers with the OfS](#).

<sup>40</sup> See [Regulatory framework for higher education in England](#).

Element of registration	Providers this is applicable to	Specified information	Specified time	Specified manner	Reference to consultation proposal <sup>29</sup>
		<p>providers about the financial information required for registration<sup>41</sup></p> <ul style="list-style-type: none"> <li>• Detailed commentary to accompany the financial and student number tables to explain the data you have provided as set out in the guidance for providers about the financial information required for registration</li> </ul>	<p>assessment is complete.</p> <p>The OfS will write to notify the provider that this information is required.</p> <p>It is to be submitted within 60 working days of the OfS's request</p>		
D	Providers that have been in operation and providing higher education for <b>more than three years</b>	<ul style="list-style-type: none"> <li>• Full audited (and where providers have subsidiaries consolidated) financial statements for the three most recent years. Audited financial statements must be prepared on the basis of the Financial Reporting Standard 102 (FRS 102) or the International Reporting Standards (IFRS) and include all of the following: <ul style="list-style-type: none"> <li>○ A 'Statement of financial position' (balance sheet)</li> <li>○ A 'Statement of comprehensive income' incorporating profit or loss for the period and items of other comprehensive income</li> <li>○ A 'Statement of changes in equity' or a 'Statement of income and retained earnings' or a 'Statement of changes in reserves'</li> </ul> </li> </ul>	To be submitted with application	Via the OfS Portal	This is a current requirement as set out in Regulatory advice 3 and 'Guidance for providers about financial information required for registration'.

<sup>41</sup> See Guidance for providers about the financial information required for registration' at [Regulatory advice 3: Registration of English higher education providers with the OfS](#).

Element of registration	Providers this is applicable to	Specified information	Specified time	Specified manner	Reference to consultation proposal <sup>29</sup>
		<ul style="list-style-type: none"> <li>○ A 'Statement of cash flows'</li> <li>○ Notes to the financial statements</li> <li>○ Be signed by the provider's external auditor and by its chief executive</li> </ul>			
	Providers that have been in operation and providing higher education for <b>fewer than three years</b>	<ul style="list-style-type: none"> <li>● Full audited (and where providers have subsidiaries consolidated) financial statements for as many of the last three years as the provider has been providing higher education. Audited financial statements must be prepared on the basis of the Financial Reporting Standard 102 (FRS 102) or the International Reporting Standards (IFRS) and include all of the following: <ul style="list-style-type: none"> <li>○ A 'Statement of financial position' (balance sheet)</li> <li>○ A 'Statement of comprehensive income' incorporating profit or loss for the period and items of other comprehensive income</li> <li>○ A 'Statement of changes in equity' or a 'Statement of income and retained earnings' or a 'Statement of changes in reserves'</li> <li>○ A 'Statement of cash flows'</li> <li>○ Notes to the financial statements</li> <li>○ Be signed by the provider's external auditor and by its chief executive</li> </ul> </li> </ul>	To be submitted with application	Via the OfS Portal	This is a current requirement as set out in Regulatory advice 3 and 'Guidance for providers about financial information required for registration'.

Element of registration	Providers this is applicable to	Specified information	Specified time	Specified manner	Reference to consultation proposal <sup>29</sup>
	All providers	<ul style="list-style-type: none"> <li>• Audited financial statements (and where providers have subsidiaries consolidated) for any financial years that are completed after the provider's initial submission of its registration application. Audited financial statements must be prepared on the basis of the Financial Reporting Standard 102 (FRS 102) or the International Reporting Standards (IFRS) and include all of the following: <ul style="list-style-type: none"> <li>○ A 'Statement of financial position' (balance sheet)</li> <li>○ A 'Statement of comprehensive income' incorporating profit or loss for the period and items of other comprehensive income</li> <li>○ A 'Statement of changes in equity' or a 'Statement of income and retained earnings' or a 'Statement of changes in reserves'</li> <li>○ A 'Statement of cash flows'</li> <li>○ Notes to the financial statements</li> <li>○ Be signed by the provider's external auditor and by its chief executive</li> </ul> </li> </ul>	To be submitted within nine months of the provider's financial year end	Via the OfS Portal	<b>Part 3: Proposal 2c (audited financial statements)</b>
E7 (subject to adopting the proposals in this consultation relating to condition E7)	All providers	<ul style="list-style-type: none"> <li>• The following documents which meet the definitions set out in proposed initial condition E7A <ul style="list-style-type: none"> <li>○ All documents that establish the provider and set out the rules governing how the provider is constituted and governed</li> <li>○ Governing body documents</li> <li>○ Risk and audit documents</li> </ul> </li> </ul>	To be submitted with application	Via the OfS Portal	<b>Part 2: Proposal 2 (direct assessment of a set of governing documents)</b>

Element of registration	Providers this is applicable to	Specified information	Specified time	Specified manner	Reference to consultation proposal <sup>29</sup>
		<ul style="list-style-type: none"> <li>○ Decision-making documents</li> <li>○ Conflict of interests policy</li> <li>○ Any other documents (including shareholder agreements) which contain rules which govern the operation of the provider's governing body</li> </ul>			
E7 (subject to adopting the proposals in this consultation relating to condition E7)	All providers	<ul style="list-style-type: none"> <li>● A business plan that meets the requirements set out in proposed initial condition E7B</li> </ul>	To be submitted with application	Via the OfS Portal	<b>Part 2: Proposal 3 (a clear and comprehensive business plan)</b>
E7 (subject to adopting the proposals in this consultation relating to condition E7)	All providers	<ul style="list-style-type: none"> <li>● Any policies and/or procedures that explain how the provider ensures individuals are fit and proper, including at least one of a description of its procedures for checking relevant individuals are fit and proper or a policy that sets this out</li> <li>● A declaration (in a template that will be provided by the OfS) stating whether the provider is aware of any indicative matters as listed in E7D.2 and E7D.4 of proposed initial condition E7 for any Relevant Individuals</li> <li>● The full name, contact details (email address and phone number), date of birth (day/month/year) of each of the provider's Relevant Individuals (as set out in the registration application form)</li> </ul>	To be submitted with application	Via the OfS Portal	<b>Part 2: Proposal 5 (individuals must be fit and proper)</b>

Element of registration	Providers this is applicable to	Specified information	Specified time	Specified manner	Reference to consultation proposal <sup>29</sup>
E7 (subject to adopting the proposals in this consultation relating to condition E7)	All providers	<ul style="list-style-type: none"> <li>• A completed “Provider fraud and public funding declaration form” using the template provided by the OfS (Appendix 3)</li> <li>• Any document(s) that identify risks and corresponding mitigations relating to the prevention of fraud and protection of public funds (for example a risk register or relevant excerpts from a risk register)</li> <li>• Any document(s) that set out the provider’s internal control processes relating to the prevention of fraud and protection of public funds</li> <li>• A whistleblowing policy</li> <li>• An anti-bribery policy</li> <li>• Any other documents (including any policies or procedures) that set out how the provider prevents fraud or the inappropriate use of public funds</li> </ul>	To be submitted with application	Via the OfS Portal	<b>Part 2: Proposal 6 (fraud and misuse of public funds)</b>

## Schedule 1 Part B

Providers this is applicable to	Specified Information	Specified time	Specified manner	Reference to consultation proposal
All providers	Any of the following matters: <ol style="list-style-type: none"> <li>Any change to the identity of any Relevant Individual at the provider according to the definition in proposed initial condition E7.</li> <li>The legal entity applying for registration ceasing to exist.</li> <li>A merger of the provider with another registered or unregistered higher education provider.</li> </ol>	After submission of the provider’s registration application and prior to the OfS making a final decision about the provider’s registration application, and within 28 working days of the provider becoming	Via the OfS Portal	<b>Part 3: Proposal 4 (matters to report)</b>

	<ul style="list-style-type: none"> <li>d. A change to the provider’s legal or beneficial ownership.</li> <li>e. A change of control of the provider.</li> <li>f. A change in the provider’s legal form.</li> <li>g. Amendments to the governing documents submitted by the provider in connection with its registration application</li> <li>h. An acquisition by the provider of another entity</li> <li>i. A notification to the provider of the opening of an investigation of the provider or any Relevant Individual at the provider by, or on behalf of, any awarding organisation, awarding body, professional body, regulatory body, funding body, statutory body, enforcement body, public body or other higher education provider. (This includes but is not limited to any notification to the provider that a third party is investigating the provider in relation to a possible fraud, financial irregularity or the inappropriate use of public funds, or that a third party has made a finding that the provider has committed fraud).</li> <li>j. The provider resolving to cease carrying on its business principally in England.</li> <li>k. The provider resolving to fully or substantially cease providing higher education, or if it was applying for registration as a provider in prospect, resolving to no longer provide higher education in future.</li> <li>l. A notification to the provider that its awarding organisation or awarding body is to withdraw from the arrangement.</li> <li>m. Termination of a partnership arrangement, whether in the UK or internationally. Establishment of a new partnership arrangement, whether in the UK or internationally.</li> <li>n. For a provider with a legally binding obligation of, or which otherwise receives, financial support</li> </ul>	<p>aware of the Specified Information</p>		
--	--	---	--	--

	<p>underpinning its financial viability and sustainability, the withdrawal of the obligation or that financial support (including as a result of a change of ownership or control of the provider, even where the new owner will offer a similar obligation or financial support), or an adverse change in the counterparty's financial position or other standing that could affect its suitability as a counterparty.</p> <ul style="list-style-type: none"><li>o. Any notification from a provider's external auditor that it has concluded that the provider is not a going concern, or any assessment by the provider's trustees or directors that the provider is not a going concern.</li></ul>			
--	--	--	--	--

## Appendix 1 of Annex A: Initial condition C5 declaration form

Please place an X in the relevant box.		YES	NO
In a context that directly or indirectly relates to the provision of education and <b>Ancillary Services</b> , has the provider been subject to findings under any of the matters listed a. to d.	a. non-compliance with <b>Consumer Protection Law</b> , as found by a UK court or <b>Competent Authority</b> ;		
	b. the offence provided for in section 214(1) of the Education Reform Act 1988 (unrecognised degrees);		
	c. the offence provided for in section 76(6) of the Companies Act 2006 (failure to comply with a Secretary of State direction to change a company name);		
	d. the offence provided for in section 1198 of the Companies Act 2006 (name giving misleading indication of activities).		
<p>If you have answered 'yes' to any of the above questions, please provide further details below. This should include a summary of the circumstances and, where relevant, any mitigations that have been put in place following the adverse finding.</p> <p>Please note: if the answer is 'yes' to any of the above questions, unless the provider can otherwise demonstrate that it has addressed any issues related to the offences to the satisfaction of the OfS, the provider will not satisfy the requirements of initial condition C5</p>			

Please refer to initial Condition C5 (treating students fairly) for definitions of the following terms:

- **Ancillary Services**
- **Consumer Protection Law**
- **Competent Authority**

I declare that the information provided above is true and correct to the best of my knowledge.

Name of provider:

Name of individual making declaration:

Signature:

## Appendix 2 of Annex A: Initial condition C5 checklist

### Proposed initial condition C5 submission checklist

I confirm that I have submitted the following documents:	
<p>Template contract(s) that set out terms and conditions for the provision of higher education, including terms related to any tuition fees payable and any additional costs that may apply (including but not limited to additional fees to re-sit exams).</p>	<p>Choose at least one the following options (and all that apply):</p> <ul style="list-style-type: none"> <li>▪ I have submitted template contract(s) between my provider and any students my provider will teach <input type="checkbox"/></li> <li>▪ I have submitted template contract(s) between other parties and any students my provider will teach (select as appropriate):               <ul style="list-style-type: none"> <li>○ template contract(s) between students my provider will teach and any other higher education provider, where my provider is delivering higher education on behalf of that provider (for example, through a subcontractual arrangement) <input type="checkbox"/></li> <li>○ relevant extracts of template contract(s) between apprentice students and their employer, where there are specific terms and conditions related to the higher education that will be delivered by my provider <input type="checkbox"/></li> </ul> </li> <li>▪ I have submitted template contract(s) between my provider and any students that will be taught by another party on my provider's behalf <input type="checkbox"/></li> <li>▪ I have submitted template contract(s) between another party and students that will be taught by that party on my provider's behalf <input type="checkbox"/></li> </ul> <p>Please include any additional information you consider to be relevant (or otherwise leave blank): <a href="#">Click or tap here to enter text.</a></p>
<p>Template contracts (including terms and conditions) between students and my provider for the provision of ancillary services or facilities (where my provider offers these and there is a separate contract that students are required to sign)</p>	<p><u>Library services:</u></p> <p>Choose one of the following options:</p> <ul style="list-style-type: none"> <li>▪ Yes <input type="checkbox"/></li> <li>▪ My provider does not offer these services (or they are offered by a third party on my provider's premises) <input type="checkbox"/></li> <li>▪ My provider offers these services but there is no separate contract that students are required to sign <input type="checkbox"/></li> </ul> <p>Please include any additional information you consider to be relevant (or otherwise leave blank): <a href="#">Click or tap here to enter text.</a></p>

Disability support packages

Choose one of the following options:

- Yes
- My provider does not offer these services (or they are offered by a third party on my provider's premises)
- My provider offers these services but there is no separate contract that students are required to sign

Please include any additional information you consider to be relevant (or otherwise leave blank): [Click or tap here to enter text.](#)

Scholarships

Choose one of the following options:

- Yes
- My provider does not offer these services (or they are offered by a third party on my provider's premises)
- My provider offers these services but there is no separate contract that students are required to sign

Please include any additional information you consider to be relevant (or otherwise leave blank): [Click or tap here to enter text.](#)

Accommodation

Choose one of the following options:

- Yes
- My provider does not offer these services (or they are offered by a third party on my provider's premises)
- My provider offers these services but there is no separate contract that students are required to sign

Please include any additional information you consider to be relevant (or otherwise leave blank): [Click or tap here to enter text.](#)

Sports facilities

Choose one of the following options:

- Yes
- My provider does not offer these services (or they are offered by a third party on my provider's premises)

	<ul style="list-style-type: none"> <li>▪ My provider offers these services but there is no separate contract that students are required to sign <input type="checkbox"/></li> </ul> <p>Please include any additional information you consider to be relevant (or otherwise leave blank): <a href="#">Click or tap here to enter text.</a></p>
<p>Policy (or policies) relating to the circumstances in which my provider may make changes to:</p> <ul style="list-style-type: none"> <li>▪ courses (including changes to: material components or content of a course, changes to subjects offered and course closure)</li> <li>▪ qualifications to be awarded (including circumstances where a validating partner has withdrawn validation)</li> <li>▪ modes of study (including full-time, part-time, online and hybrid provision, and including measures to address the needs of specific student groups, including accessibility needs)</li> <li>▪ teaching location and facilities (including, closure of a campus, building or other facilities and including measures to address the needs of specific student groups, including accessibility needs)</li> <li>▪ course fees and other related fees or charges (for example, additional fees to re-sit exams)</li> </ul>	<p>Yes <input type="checkbox"/></p>
<p>Complaints process(es) related to the provision of higher education - where there are different processes for different categories of student, I have included all of these in my submission</p>	<p>Yes <input type="checkbox"/></p>
<p>Policy (or policies) that set out the terms for refund and compensation for higher education students</p>	<p>Choose at least one of the following options (and all that apply):</p> <ul style="list-style-type: none"> <li>▪ I have submitted the refund and compensation policies of my provider <input type="checkbox"/></li> <li>▪ I have submitted the refund and compensation policies of another higher education provider <input type="checkbox"/></li> <li>▪ I have submitted other refund and compensation policies <input type="checkbox"/></li> </ul>

	Please include any additional information you consider to be relevant (or otherwise leave blank): Click or tap here to enter text.
Completed initial condition C5 declaration form	Yes <input type="checkbox"/>

## Appendix 3 of Annex A: Fraud and public funding declaration

D Please place an X in the relevant box	YES	NO
1. Within the last 60 months, has the provider been convicted of the offence provided for in section 199 of the Economic Crime and Corporate Transparency Act 2023?		
2. Within the last 60 months, has a <b>Relevant Person</b> made a final decision which has directly or indirectly revoked the provider's access to, or required the provider to repay, <b>Relevant Public Funds</b> on grounds relating to a <b>Relevant Fraud Offence</b> and/or the <b>Inappropriate Use</b> of such funds?		
3. Within the last 60 months has the provider received a conviction described in question 1, or a decision described in question 2 in relation to another legal entity that the OfS considers to have been operating substantially the same higher education business as the provider?		
<p>If you have answered yes to any of the above questions, please provide further details below. This should be a summary of the circumstances and, where relevant, any mitigations that have been put in place following the event.</p> <p><b>Please note:</b> if the answer is 'yes' to any of the above questions, the provider will be deemed not satisfy the requirements of initial condition E7 unless there are exceptional circumstances which demonstrate, in the OfS' judgement, that the provider nevertheless has a satisfactory track record in relation to receiving and/or accessing public funds"</p>		

I declare that the information provided above is true and correct to the best of my knowledge.

Name of provider:

Name of individual making declaration:

Signature:

Please refer to initial Condition E7 (effective governance) for definitions of the following terms:

- **Relevant Person**
- **Relevant Public Funds**
- **Relevant Fraud Offence**
- **Inappropriate Use**

## Appendix 4 of Annex A: Investigations declaration form

### Investigations into the provider

In the 60 months preceding the date of the provider's OfS registration application, has the provider been subject to any investigation, by or on behalf of, any of the bodies listed in the table below?

Type of body	Yes [please tick]	No [please tick]
Awarding organisation		
Awarding body		
Professional body		
Regulatory body		
Funding body		
Statutory body		
Enforcement body		
Public body		
Other higher education provider		

In the 60 months preceding the date of the provider's OfS registration application means:

- any investigation that was concluded within the 60 months preceding the date of the provider's OfS registration application (regardless of when it was opened).
- any investigation that was opened within the 60 months preceding the date of the provider's OfS registration application and is not yet concluded, that is, is still open or where the outcomes are still pending.

If you have answered 'yes' please provide further information for each investigation into the provider as follows.



## Investigations into relevant individuals

In the 60 months preceding the date of the provider's OfS registration application, has any Relevant Individual at the provider been subject to any investigation, by or on behalf of any of the bodies listed in the table below?

You do **not** need to disclose the identity of the Relevant Individual(s) in this declaration. If you answer 'yes' the OfS will seek further information during its assessment of your registration application.

Type of body	Yes [please tick]	No [please tick]
Awarding organisation		
Awarding body		
Professional body		
Regulatory body		
Funding body		
Statutory body		
Enforcement body		
Public body		
Other higher education provider		

'Relevant Individual' means

- any member of the provider's governing body
- the individual proposed as the accountable officer for the purposes of ongoing condition E3
- the individual(s) proposed to hold overarching responsibility for the management of the provider's financial affairs
- any company director of the provider
- any company secretary of the provider
- any individual who holds more than 25% of the shares in the provider;
- where the provider has a parent company, any individual who holds more than 25% of the shares in that parent company; and
- any individual who would have significant overarching responsibility for ensuring that the provider complies with the ongoing conditions of registration (if registered).

I declare that the information provided above is true and correct to the best of my knowledge.

Name of provider:

Name of individual making declaration:

Signature:

## Annex B: Comparison of current and proposed submission requirements

The consultation document sets out our proposals to make some changes to the OfS registration requirements. This annex summarises the changes we are proposing to the content of registration applications.

Table 7 below summarises the current registration application submission requirements set out in Regulatory advice 3, Annex C<sup>42</sup> and compares them with the proposed submission requirements which are set out in the proposed section 3(5) Notice at Annex A of this consultation document.

**Table 7: Summary of current registration application submission requirements compared with the submission requirements proposed in this consultation**

Initial condition of registration	Current submission requirements	Proposed submission requirements	Reference to proposal in consultation document
<b>Application form</b>	<ul style="list-style-type: none"> <li>Complete all tabs on the application form downloaded from the portal</li> </ul>	<ul style="list-style-type: none"> <li>No change</li> </ul>	
<b>Supplementary evidence</b>	<ul style="list-style-type: none"> <li>If you state that you have permission to use the word 'university' or 'university college' in your business name under the provisions of the Companies Act, you will need to submit a letter of non-objection from the Department for Education (this also applies if you use the word 'university' in your trading name)</li> </ul>	<ul style="list-style-type: none"> <li>No change</li> </ul>	
<b>General</b>		<p>A diagram showing the provider's corporate structure and ownership. The diagram should:</p> <p>Include all legal and beneficial owners of the provider (direct and indirect) including the ultimate</p>	Part 3: Proposal 2d (diagram showing corporate structure and ownership)

<sup>42</sup> Please see Annex C of Regulatory advice 3 at [Regulatory advice 3: Registration of English higher education providers with the OfS - Office for Students](#)

Initial condition of registration	Current submission requirements	Proposed submission requirements	Reference to proposal in consultation document
		<p>beneficial owner, whether individuals or corporate entities</p> <p>Include any trusts with ownership interests (direct or indirect) in the provider together with an explanation of what ownership interests the trust has and the nature of the trust, including whether it is owned by any other legal or natural person and who its beneficiaries are</p> <p>Illustrate the provider’s position alongside its parent and subsidiary undertakings (where it has these), as defined by the Companies Act 2006</p> <p>Include other entities that fall under a common parent undertaking to the provider applying to be registered</p> <p>Illustrate the relationship between all individuals and entities shown</p>	
<b>General</b>		<p>A completed ‘Investigations declaration form’ using the template provided by the OfS (Annex A, Appendix 4)</p>	<p>Part 3: Proposal 3 (historical and current investigations)</p>

Initial condition of registration	Current submission requirements	Proposed submission requirements	Reference to proposal in consultation document
A1	<ul style="list-style-type: none"> <li>• Access and participation plan</li> <li>• Supporting information about fees, targets and investments</li> </ul>	<ul style="list-style-type: none"> <li>• No change</li> </ul>	
A2	<ul style="list-style-type: none"> <li>• Access and participation statement and link to where this is published</li> </ul>	<ul style="list-style-type: none"> <li>• No change</li> </ul>	
B7	<ul style="list-style-type: none"> <li>• Quality plan</li> <li>• Supporting evidence</li> <li>• Itemised list of supporting evidence</li> </ul>	<ul style="list-style-type: none"> <li>• No change</li> </ul>	
B8	<ul style="list-style-type: none"> <li>• Provider information form</li> <li>• Supporting information as requested once quality and standards assessment commences</li> </ul>	<ul style="list-style-type: none"> <li>• No change</li> </ul>	
<b>B7/B8 proof of payment</b>		<p>Proof of payment of the fee for the OfS quality and standards assessment within ten working days of request.</p>	<p><b>New requirement.</b> If a provider does not pay for a quality and standards assessment (if it is referred for one) the OfS cannot proceed with its assessment and may therefore refuse registration</p>
C1	<ul style="list-style-type: none"> <li>• Self-assessment on guidance on consumer protection law</li> <li>• Provider’s student contracts</li> </ul>	<p>None (replaced by proposed initial condition C5)</p>	

Initial condition of registration	Current submission requirements	Proposed submission requirements	Reference to proposal in consultation document
C3	<ul style="list-style-type: none"> <li>Student protection plan</li> </ul>	None (replaced by proposed initial condition C5)	
C5	N/A	<p>Template contract(s) that set out terms and conditions for the provision of higher education.</p> <p>Any template contracts (including terms and conditions) between a student and the provider for the following ancillary services or facilities (where the provider offers these and there is a separate contract that students are required to sign):</p> <p>Any policy (or policies) relating to the circumstances in which the provider may make changes to:</p> <p>Courses</p> <p>qualifications to be awarded</p> <p>modes of study</p> <p>teaching location and facilities</p> <p>Complaints process(es) related to the provision of higher education</p> <p>Any policy (or policies) that set out the terms for refund and compensation for higher education students</p>	<p>Part 1: Proposal 6 (treating students fairly)</p>

Initial condition of registration	Current submission requirements	Proposed submission requirements	Reference to proposal in consultation document
		<p>A completed initial condition C5 declaration form (see Part 3, Annex A, Appendix 1)</p> <p>A completed initial condition C5 submission checklist (see Part 3, Annex A, Appendix 2)</p>	
<b>D – all providers</b>	<ul style="list-style-type: none"> <li>Financial and student number tables</li> <li>Commentary to accompany financial tables</li> </ul>	No change	
<b>D – all providers</b>		<p>If financial support is being guaranteed to the provider by a third party, a legally binding obligation of financial support and audited financial statements from that third party that meets the requirements set out in paragraphs 403-407 of the OfS’s regulatory framework<sup>43</sup></p>	<p>This is a current requirement as set out in Regulatory advice 3 and ‘Guidance for providers about financial information required for registration’</p>
<b>D – all providers</b>		<p>Financial scenario planning, accompanying commentary and mitigating actions (in a template that will be provided by the OfS specifying the scenarios to be planned for subject to the outcomes of this consultation)</p>	<p>Part 3: Proposal 2a (financial scenario planning)</p>

<sup>43</sup> See [Regulatory framework for higher education in England](#).

Initial condition of registration	Current submission requirements	Proposed submission requirements	Reference to proposal in consultation document
<b>D – providers that have been providing higher education for more than three years)</b>	<ul style="list-style-type: none"> <li>• Full audited financial statements for the three most recent years</li> </ul>	<ul style="list-style-type: none"> <li>• Full audited financial statements for the three most recent years (no change)</li> </ul>	
<b>D – providers that have been providing higher education for fewer than three years)</b>	<ul style="list-style-type: none"> <li>• Full audited financial statements for as many of the previous three full years as the provider has been providing higher education</li> <li>• Business plan</li> <li>• Information about financial backing where relevant</li> </ul>	<ul style="list-style-type: none"> <li>• Full audited financial statements for as many of the previous three full years as the provider has been providing higher education (no change)</li> </ul> <p data-bbox="1052 774 1848 901">The requirement for a business plan would be replaced by the business plan in proposed initial condition E7</p> <ul style="list-style-type: none"> <li>• Information about financial backing replaced by clarified requirements relating to financial support provided by a third party (above)</li> </ul>	Part 2: Proposal 3 (a clear and comprehensive business plan)
<b>D – providers that have not delivered higher education in the past three years)</b>	<ul style="list-style-type: none"> <li>• Business plan</li> <li>• Information about financial backing where relevant</li> </ul>	<ul style="list-style-type: none"> <li>• The requirement for a business plan would be replaced by the business plan in proposed initial condition E7</li> <li>• Information about financial backing replaced by clarified requirements relating to financial support provided by a third party (above)</li> </ul>	Part 2: Proposal 3 (a clear and comprehensive business plan)
<b>E1 and E2</b>	<ul style="list-style-type: none"> <li>• Self-assessment of management and governance</li> </ul>	None (replaced by proposed initial condition E7)	

Initial condition of registration	Current submission requirements	Proposed submission requirements	Reference to proposal in consultation document
	<ul style="list-style-type: none"> <li>Governing documents and any other supporting evidence referred to in the self-assessment</li> <li>Itemised list of each piece of evidence submitted in relation to E1 and E2</li> </ul>		
<b>Proposed E7</b>		<p>The following documents which meet the definitions set out in initial condition E7A:</p> <p>All documents that establish the provider and set out the rules governing how the provider is constituted and governed.</p> <p>Governing body documents</p> <p>Risk and audit documents</p> <p>Decision-making documents</p> <p>Conflict of interests policy</p> <p>Any other documents (including shareholder agreements) which contain rules which govern the operation of the provider's governing body</p>	Part 2: Proposal 2
<b>Proposed E7</b>		<p>A business plan that meets the requirements set out in proposed initial condition E7</p>	Part 2: Proposal 3

Initial condition of registration	Current submission requirements	Proposed submission requirements	Reference to proposal in consultation document
<b>Proposed E7</b>		<p>Any policies and/or procedures that explain how the provider ensures individuals are fit and proper</p> <p>A declaration (in a template that will be provided by the OfS) stating whether the provider is aware of any indicative matters as listed in E7D.2 and E7D.4 of proposed initial condition E7 for any Relevant Individuals</p> <p>The full name, contact details (email address and phone number), date of birth (day/month/year) of each of the provider’s Relevant Individuals</p>	Part 2: Proposal 5
<b>Proposed E7</b>		<p>A completed “Provider fraud and public funding declaration form” using the template provided by the OfS (Annex A, Appendix 3)</p> <p>Any document(s) that identify risks and corresponding mitigations relating to the prevention of fraud and protection of public funds (for example a risk register or relevant excerpts from a risk register)</p> <p>Any document(s) that set out the provider’s internal control processes relating to the prevention of fraud and protection of public funds</p>	Part 2: Proposal 6

Initial condition of registration	Current submission requirements	Proposed submission requirements	Reference to proposal in consultation document
		<p>A whistleblowing policy</p> <p>An anti-bribery policy</p> <p>Any other document(s) (including policies or procedures) that set out how the provider prevents fraud or the inappropriate use of public funds</p>	

# **Annex C: Alternative options considered**

## **Proposal 1: To determine requirements for registration applications under section 3(5) of HERA**

### **Current arrangements**

1. We have considered maintaining our current approach, which would avoid implementing any substantive changes and rely on the existing guidance to set out to providers how to submit applications. For the reasons set out in the consultation, we think changes are needed.

### **Enhanced pre-application support**

2. We also considered attempting to improve the efficiency of the registration process only through non-regulatory measures, such as enhanced pre-application support. We have provisionally discounted this approach because while some targeted support may be sufficient to enable many providers to submit well-prepared applications, our experience is that this would not be sufficient for all providers. The OfS does not have a remit nor the resources to provide the kind of intensive support that some applicants would need to comply.

## **Proposal 2a: Additional financial scenario planning, commentary and mitigation plans**

### **Current arrangements**

3. We considered not requiring a provider to undertake financial scenario planning as part of the registration application due to the added burden this creates. However, in light of the financial challenges we are seeing in the higher education sector and overly optimistic forecasting of student recruitment, we think that any increase in burden is outweighed by the additional protection that submitting financial scenario planning will ultimately give to students and taxpayers by ensuring that the OfS only registers providers that can demonstrate they will remain viable and sustainable under adverse but realistic financial conditions.

### **More flexible scenario planning**

4. We considered a more flexible approach to financial scenario planning according to the size and context of the provider (for example, that the provider could detail its own scenarios in its financial submission). We have provisionally discounted this approach because we think that a prescriptive approach is necessary to ensure that a provider considers the scale of the real financial risks that are occurring in the higher education sector. This helps ensure that the assessment of risk is not distorted by overly optimistic views on student recruitment, for example.

## **Proposal 2b: Updated financial and student number tables and commentary**

### **Current arrangements**

5. We considered the option of continuing the current approach of requesting updated financial data from providers on a more ad hoc basis during the course of the application process. We have initially discounted this option because we think this approach causes uncertainty for a

provider about when financial updates might be requested, which we think is more burdensome than a clear upfront requirement.

### **Only requesting confirmation of any changes**

6. We considered an option of requesting confirmation from a provider shortly prior to making a registration as to whether anything had changed (or that nothing had changed) with respect to its financial position or forecasts since its initial submission. Our provisional view and our experience of registration is that it would be highly unlikely that nothing had changed over a period of almost one year, particularly in light of the volatility we are seeing in the financial operating environment. Therefore, such a request would be likely in the vast majority of circumstances to result in confirmation that the provider's position or forecasts had changed, triggering the need for the provider to then submit further information to clarify these changes. We would be likely to request this information in the form of updated financial and student numbers tables.

### **Submitting information only at the end of the registration application**

7. An alternative option considered was not requiring the financial and student numbers tables as part of a provider's initial application. Instead, this information would only be required towards the end of the registration assessment, prior to a final registration decision. While this approach could reduce the initial administrative burden on a provider, we think that requiring financial and student number data only at the conclusion of the registration process risks delaying identification of critical issues as part of our assessment of whether a provider satisfies initial condition D. Early identification of risks enables the OfS to request further clarification during the assessment. Identifying early that a provider does not satisfy initial condition D of registration may also avoid that provider paying for and undergoing a quality and standards assessment in a situation in which it will ultimately be refused registration.

## **Proposal 2c: Audited financial statements for any financial years that are completed after registration application submission within 9 months**

### **Current arrangements**

8. Similarly to Proposal 2b, we considered the option of continuing the current approach of requesting updated audited financial statements from providers on a more ad hoc basis (as they become available) during the course of the application process. We have initially discounted this option because we think this approach causes uncertainty for a provider about when this information might be requested, which is often more burdensome in practice than a clear upfront requirement.

### **Unaudited financial data**

9. We considered whether requiring unaudited financial data from a provider for financial years completed after its application submission but before the registration decision would achieve our aim. This approach would not be as burdensome for a provider as it would not need to undergo the process of commissioning an external audit for this period during the registration assessment period. A further advantage of this approach is that unaudited data can often be prepared and submitted more quickly than audited financial statements.
10. We have provisionally discounted this option as we do not think it will enable us to achieve our aim because:

- a. Unaudited financial statements lack the rigor and reliability of the independent verification provided by an audit.
- b. A provider may use different standards or methods for preparing unaudited data, which means the OfS cannot place the same reliance on such data as it can on data audited according to accepted accountancy standards.
- c. Relying on unaudited data could raise the risk of registering providers that are in fact financially unviable or unsustainable, which may adversely affect students and erode confidence in the sector.

### **Longer deadline**

11. We also considered the option of a longer deadline for submitting audited financial statements. While this would reduce administrative pressure for providers, it reduces the effectiveness of the information in informing OfS decision making and increases the risk of registering a provider that is not financially secure.

## **Proposal 2d: Diagram showing corporate structure and ownership**

### **Current arrangements**

12. We considered maintaining the status quo and only requiring providers to submit a completed application form and governing documents relevant to the assessment of initial condition E1 and E2 (according to existing requirements) or proposed initial condition E7 (if we adopt the proposals in relation to E7 set out in Parts 1 and 3 of this consultation). Our provisional view is that this would not resolve the increased length of time sometimes required for the OfS to understand a provider's corporate structure where it is particularly complex.

## **Proposal 3: Historical and current investigations**

### **Current arrangements**

13. We have considered maintaining our current approach whereby we do not request (any) information about recent or current investigations a provider is subject to when it applies to be registered. However, our initial view is that maintaining the current arrangements would not enable us to achieve our aim of ensuring we have all information relevant to our assessment of a provider's registration application when it submits its application.

### **Risk-based disclosure**

14. We considered the option of risk-based disclosure requirements where a provider would be required to disclose only investigations it judged were likely to have a material impact on the OfS assessment. While this could reduce the burden on a provider by reducing the number of potential investigations it would need to submit information about, the need for providers to make a judgement about materiality could lead to either honest misinterpretation or deliberate underreporting of relevant matters. Our initial view is that it would not achieve our aim of having all information relevant to the OfS's assessment.

### **Narrower requirements**

15. We considered proposing narrower disclosure requirements such as:

- a. requiring disclosure of all current investigations but only historical investigations where they resulted in sanctions
  - b. only requiring investigations by certain bodies, relating to certain subjects, or that led to certain sanctions.
16. Our initial view is that while this could reduce burden on providers, ensuring that all matters most likely to be relevant were captured would be likely to require complex and extensive guidance. Even with such guidance in place, there would be an increased risk of relevant issues not being shared with the OfS, either inadvertently or deliberately.

### **Alternative time periods**

17. We considered whether introducing the requirement but with an alternative time period (within which we would require investigation information) would enable us to achieve our aim. The choice of timeframe for requiring disclosure of investigations directly affects the scope of information the OfS would receive from a provider.
18. We considered the option of a shorter timeframe of 24-36 months, which would highlight only more recent issues. This would potentially allow the OfS to assess the provider's current status and practices without having to spend time considering older, resolved matters. We considered that this option could be less burdensome for a provider and the OfS. We also considered the disadvantages of this option where a shorter timeframe might omit investigations that reveal long-standing systemic problems or issues that continue to affect the provider. The lifecycle journey of students at a higher education provider can span five or more years, so we think the proposed time frame will help us understand the likely risks to student outcomes at the provider. If a provider faced significant investigations or sanctions five years ago (for example, related to governance, financial mismanagement, or quality assurance), the consequences might still affect current or recent students. We think that this option could limit the context available to the OfS in assessing the risk of recurring issues and may hinder a comprehensive risk assessment.
19. We considered the option of proposing a longer timeframe of 84-120 months, which would capture a wider-ranging picture of a provider's regulatory and investigatory history and enable the OfS to identify persistent or recurring issues over an extended period. We think that the disadvantages of a longer time period are that older investigations may no longer reflect the provider's current operations, leadership or governance, and changes in relevant individuals could render past investigations less meaningful. Requiring a provider to disclose investigations from, for example, ten years ago could be overly burdensome, especially if records are not readily available or accessible. We think that this option would lead to a less targeted focus on a provider's present ability to meet eligibility and conditions of registration. We therefore provisionally discounted this option.

### **Alternative to a section 3(5) Notice**

20. We considered an alternative option to impose a requirement in a section 3(5) Notice that any provider with an open investigation would be unable to submit a registration application until that investigation was complete. Our provisional view is that this would be overly burdensome. This is because some investigations (or their findings) may be of little relevance to the OfS's assessment of the provider's registration application. Further, because the term

'investigations' can be interpreted broadly, it could incorporate routine inspection activity which is unlikely to indicate increased regulatory risk.

21. Adopting this option may therefore preclude a provider from applying for registration because it was subject to an investigation, or undergoing routine inspection activity, that was unlikely to be relevant to the OfS's judgements about the provider's compliance with OfS requirements and therefore the (lack of) potential regulatory risks would not justify preventing the provider from seeking registration.

## **Proposal 4: Reporting specified matters that affect an application to register**

### **Current arrangements**

22. We have considered not making any changes in relation to reporting specified matters during the registration assessment period. However, as we set out in Proposal 4, where a matter has been reported late and has had a material impact on our assessment, we have had to spend further time and resources requesting and reviewing further relevant information and redoing our assessment. If matters had been reported more quickly this would have avoided us undertaking abortive work. In a small number of cases, important matters have not been reported to us at all and we have subsequently become aware of them via third party notifications. We have had to investigate these before making a registration decision, which has taken considerable time. These situations impact on our ability to plan assessment resources and to deliver assessments to predictable timelines. Providers have also sometimes not made us aware of important matters, which has created a risk that we wrongly assess that they are eligible or wrongly assess that they meet a condition of registration. We have therefore provisionally discounted this option.

### **Keeping applications substantively or materially up to date**

23. We considered proposing a requirement for a provider to keep its registration application 'substantively' or 'materially' up to date and accurate, potentially in conjunction with directing a provider to the existing reportable events guidance to give an indication of the type of information that should be reported to us. This approach would leave the judgement about what information to share at a provider's discretion.
24. However, the disadvantage of leaving these judgements to a provider are:
  - a. This may increase the regulatory burden on a provider, if its staff spend significant amounts of time trying to determine whether particular matters are, or are not, material to the assessment of its application and therefore whether or not they should be reported.
  - b. A provider may get this judgement wrong, and fail to report or deliberately not disclose important information to the OfS, which could result in wasted time for a provider and the OfS, and a provider's registration application being refused if the information subsequently comes to light in another way.

### **Shorter reporting timeframes**

25. We also considered the option of a shorter reporting timeframe than the proposed 28 days (for example, that matters must be reported within five or ten working days). A shorter timeframe

would ensure the OfS has information in a timely manner but would impose more burden on a provider that may not be proportionate, particularly in view of the fact that if a provider fails to meet this reporting timeframe its registration application could be refused.

## **Proposal 5: Fixed-term resubmission restriction for registration refusals**

### **Alternative lengths of resubmission restriction**

26. In developing our approach to introducing a resubmission restriction period, we considered alternative options. We considered alternative lengths of a resubmission restriction, of six months, nine months or 12 months.
27. In particular, we considered the option of a 12-month resubmission restriction period which we think could have the following benefits:
  - a. A 12-month restriction period may better enable a provider with capacity to improve quickly to not be unduly delayed in its application.
  - b. A 12-month restriction period may correspond well with annual planning and operational cycles. This alignment allows providers to plan resubmissions alongside other strategic activities, such as course development or recruitment.
28. We considered whether a 12-month resubmission restriction could enable us to achieve our aim while also being less intrusive than an 18-month resubmission restriction. We considered that a 12-month restriction may be more appropriate, particularly for a provider that can quickly address application deficiencies, and it avoids unnecessarily penalising a provider that is capable of making improvements within a shorter timeframe.
29. Our initial considerations, which have led us to propose of 18 months instead of 12 months, are:
  - a. For a provider requiring significant organisational or operational changes, 18 months to implement the required adjustments would likely be appropriate. Governance restructuring, quality improvements, or securing additional funding often require a substantial period of time to complete effectively.
  - b. An 18-month restriction acts as a stronger incentive than 12 months, and therefore decreases the risk of providers submitting applications that do not meet our requirements, whether applying for the first time or following any refusal.

### **Additional flexibility**

30. We considered the option of whether additional flexibility could be introduced to address concerns that a 12-month restriction might not be enough in some cases. We considered the option of allowing a provider to resubmit earlier if it was able to demonstrate that all deficiencies from the refused registration application had been fully addressed. Or whether a restriction period could vary based on the type or category of registration application, reflecting the complexity or scale of changes required.
31. We have initially discounted these options because:

- a. Allowing a provider to apply for early resubmission would require the OfS to review an application to ascertain whether deficiencies had been addressed. This would create an additional administrative task, potentially delaying decisions on other applications, and would therefore not achieve our aim.
  - b. There could be inconsistency in assessing whether deficiencies have been fully addressed.
  - c. A provider may make minimal changes to address only the most apparent deficiencies and seek early resubmission without meaningfully improving their applications. This would not achieve our aim as the restriction aims to encourage comprehensive reflection and robust improvement.
  - d. Introducing varying restriction periods is likely to add complexity to the process. Determining the appropriate restriction period for each type or category of application could lead to confusion for a provider and would not be an effective and efficient use of OfS resources.
32. We have also initially discounted the options of six- or nine-month resubmission restriction periods as we think they would not adequately achieve our aim. This is because our initial view is that they would not create a strong enough incentive for a provider to invest the necessary time and effort into preparing a high quality application when it first applies for registration.

### **Differentiated resubmission restriction periods**

33. We considered proposing a differentiated resubmission restriction periods, whereby a refusal under section 3(5) of HERA because a provider's application was incomplete would attract a six-month resubmission restriction, but a refusal due to not meeting one or more initial conditions of registration would attract a longer resubmission restriction. This is because changes required to rectify an incomplete application may be able to be completed more quickly by a provider than the changes needed to evidence compliance with initial conditions of registration (though this depends on how significant the issues identified are). We have provisionally discounted this option as we think a six-month restriction may not achieve the objective of incentivising providers to engage carefully with the OfS's guidance and ensure that any submitted application fully complies with the OfS's requirements for an application upon the first attempt.
34. However, our provisional view is that this proposal would not achieve the desired incentive for providers to submit well-prepared applications that meet all the OfS's requirements on the first attempt. This is because they could use their first application to gauge the level of compliance required and how close they are to achieving this, address any weaknesses then resubmit immediately afterwards. This would place undue burden on OfS resource and be an inefficient process for providers. To avoid a provider needing to use the application process to gauge the level of compliance required, in addition to the detailed written guidance we already supply, we propose to standardly offer application support calls moving forward as outlined in Proposal 1.

## **New initial condition of registration**

35. We considered imposing a new initial condition of registration as an alternative mechanism of achieving the resubmission restriction. This would introduce a new rule-based initial condition that would state that if a provider made an application within 18 months of receiving a final decision to refuse registration, it would not satisfy that initial condition.
36. We have provisionally discounted the option to impose a new initial condition of registration to achieve this restriction for the following reasons:
  - a. Issuing a section 3(5) determination is in this case less resource intensive for both the OfS and the provider involved. If this restriction were imposed as a condition of registration, the provider's compliance with this condition would need to be assessed. According to the current process, this would require the provider to submit a complete initial registration application, and invest considerable time and resources in doing so, before the OfS assessed compliance with the condition. If the OfS subsequently determined the condition was not met and refused the application, this investment would have been wasted.
  - b. A section 3(5) determination allows the OfS to respond more quickly and flexibly to emerging issues or changes in the higher education landscape, for example if we wanted to vary this restriction in future. This is important for addressing specific regulatory needs without the lengthy process of establishing a new initial condition of registration.

# Annex D: List of consultation questions

## Question 1a

Do you agree or disagree with the proposal that the OfS should issue a decision under section 3(5) of HERA, which would establish the requirements for an application for OfS registration? Please give reasons for your answer.

## Question 1b

Do you have any comments on the proposed section 3(5) Notice set out in Annex A of Part 3 of this consultation?

## Question 1c

Do you agree or disagree that the proposed pre-application support would be beneficial to a provider applying for OfS registration? Please explain why.

## Question 1d

Do you support any of the alternative options we have set out in Part 3, Annex C, Proposal 1, or do you have any other proposals? If so, please explain and provide reasons for your view.

## Question 2a (i)

Do you agree or disagree with the proposal to require a provider to submit additional scenario planning, commentary and mitigation plans as part of the OfS registration application? Please give reasons for your answer.

## Question 2a (ii)

Do you agree or disagree that the proposed financial scenario parameters for a provider **already delivering** higher education provide a realistic challenge to a provider's financial forecasts? Please give reasons for your answer.

## Question 2a(iii)

Do you agree or disagree that the proposed financial scenario parameters for a provider **not yet delivering** higher education provide a realistic challenge to a provider's financial forecasts? Please give reasons for your answer.

## Question 2a (iv)

Do you support any of the alternative options we have set out in Part 3, Annex C, Proposal 2a of this consultation, or do you have any other proposals? If so, please explain and provide reasons for your view.

**Question 2b (i)**

Do you agree or disagree with the proposal to require a provider, during the registration process, to submit updated financial and student number tables and commentary? Please give reasons for your answer.

**Question 2b (ii)**

Do you support any of the alternative options we have outlined in Part 3, Annex C, Proposal 2b, or do you have any other proposals? If so, please explain and provide reasons for your view.

**Question 2c (i)**

Do you agree or disagree with the proposal to require a provider, during the registration process, to submit audited financial statements for any financial years that are completed after the provider's initial submission of its registration application, and before the OfS makes a final decision about the provider's registration? Please give reasons for your answer.

**Question 2c (ii)**

Do you support any of the alternative options we have outlined in Part 3, Annex C, Proposal 2c, or do you have any other proposals? If so, please explain and provide reasons for your view.

**Question 2d(i)**

Do you agree or disagree with the proposal to require a provider, as part of its registration application, to submit a diagram showing its corporate structure and ownership as described in this proposal? Please provide reasons for your view.

**Question 2d(ii)**

Do you support the alternative option outlined in Part 3, Annex C, Proposal 2d of this consultation, or do you have any other proposals? If so, please explain and provide reasons for your view.

**Question 3a**

Do you agree or disagree with the proposal to introduce a requirement for a provider to submit information about historical or current investigations? Please give reasons for your answer.

**Question 3b**

Do you think there may be any unintended consequences of adopting this proposal? If so, please explain your answer.

**Question 3c**

Do you support any of the alternative options we have set out in Part 3, Annex C, Proposal 3 of this consultation, or do you have any other proposals? If so, please explain and provide reasons for your view.

**Question 4a**

Do you agree or disagree with the proposal to require a provider to report to the OfS specified matters that may affect a provider's application to register? Please give reasons for your answer

**Question 4b**

We would welcome views on the list of specified matters set out in Table 6. Are there other specified matters you think should be included, or matters listed that should be excluded? Please give reasons for your answer.

**Question 4c**

Do you agree or disagree with the proposed reporting deadline of 28 days for all the specific matters proposed to be reported to the OfS? Please give reasons for your answer.

**Question 4d**

Do you think there may be any unintended consequences of adopting this proposal? If so, please explain your answer.

**Question 4e**

Do you support any of the alternative approaches we have outlined in Part 3, Annex C, Proposal 4 of this consultation, or do you have any other proposals? If so, please explain and provide reasons for your view.

**Question 5a**

Do you agree or disagree with the proposal to apply a resubmission restriction period to a provider with an application that was previously refused? Please give reasons for your answer.

**Question 5b**

Is there any other impact of this proposal or potential unintended consequences that we have not considered? If yes, please explain and provide reasons for your view.

**Question 5c**

Do you agree or disagree with the proposal that the time frame for the resubmission restriction period is 18 months? Please explain and provide a reason for your view.

**Question 5d**

Do you support any of the alternative options we have outlined in Part 3, Annex C, Proposal 5 of this consultation, or do you have any other proposals? If so, please explain and provide reasons for your view.

**Question 5e**

We are interested in respondents' views on a 12-month resubmission restriction. Do you think this is a better option than the proposed 18-month resubmission restriction? Please explain and provide reasons for your view.

**Question 6**

Do you have any comments about the impact the proposals in this consultation may have on the timeline for a registration assessment outlined in Part 3 of this consultation?

**Question 7**

Do you foresee any unintended consequences resulting from the proposals in Part 3 of this consultation? If so, please indicate what you think these are and the reasons for your view.

**Question 8**

Are there any aspects of these proposals you found unclear? If so, please specify which, and tell us why.

**Question 9**

In your view, are there ways in which the objectives discussed in Part 3 of this consultation could be delivered more efficiently or effectively than proposed here?

**Question 10**

Do you have any comments about the potential impact of these proposals on individuals on the basis of their protected characteristics?



© The Office for Students copyright 2025

This publication is available under the Open Government Licence 3.0 except where it indicates that the copyright for images or text is owned elsewhere.

[www.nationalarchives.gov.uk/doc/open-government-licence/version/3/](http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/)