

Office for
Students

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

OfS

Consultation on a new approach to regulating harassment and sexual misconduct in English higher education

Analysis of consultation responses and decisions

Reference OfS 2024.39

Enquiries to regulation@officeforstudents.org.uk

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Executive summary

1. The Office for Students (OfS) aims to ensure that every student, whatever their background, has a fulfilling experience of higher education that enriches their lives and careers. This should mean that higher education students are protected from harassment or sexual misconduct.
2. In February 2023, we consulted on a new approach to regulation in this area. This document sets out our analysis of responses and our decisions. We have also published an independent review that provides a detailed summary and analysis of the consultation responses.¹
3. Following our analysis, we have decided to proceed with our proposal to introduce a general ongoing condition of registration ('condition E6') for all universities and colleges registered with the OfS.
4. This condition has been designed to tackle harassment and sexual misconduct and to provide students with clarity about what they can expect from their university or college. In areas such as reporting systems, disciplinary processes and training of staff, there are core requirements that all providers will need to meet.
5. We have designed the condition to allow for variation in how providers achieve our core requirements as we recognise that differences in context, including how courses are delivered, the characteristics of students, or the provider's non-academic services, might require different responses. Equally importantly, we expect every provider to identify further steps it can take to tackle harassment and sexual misconduct given its own context and the needs of its students.
6. One important area we consulted on was relationships between students and staff. In our consultation we suggested a register of such relationships as our preferred option, although we also consulted on the option of an outright ban. Having carefully considered responses to the consultation, we consider that a ban on intimate personal relationships between relevant staff and students would generally be more appropriate and effective than a register, and our condition explicitly identifies this as a step that would meet our requirements. We are not however mandating a ban for every provider: the condition is drafted to allow a provider to determine the most appropriate means to reduce the risk of abuse of power in its own context.
7. We recognise that it takes time for providers to put in place robust and effective policies that are appropriate for their context. For this reason, we have significantly extended the timeline that we proposed in our consultation for implementing the new condition. The majority of the requirements in the condition will now come into force on 1 August 2025. We consider that this will allow providers time to properly engage with students, staff and others on policies, and to develop and deliver appropriate training. However, the provision restricting the use of non-disclosure agreements takes effect on 1 September 2024.

¹ See www.officeforstudents.org.uk/publications/consultation-on-a-new-approach-to-regulating-harassment-and-sexual-misconduct-responses-and-decisions/.

8. We developed our proposals because harassment and sexual misconduct continue to affect higher education students in England despite significant investment and the efforts of many higher education providers, the OfS and other organisations.² In April 2021, we published a 'statement of expectations'. This statement was presented as a set of consistent recommendations for preventative work that providers could follow. An independent evaluation, published in November 2022, found that while the statement had led to some progress, this was inconsistent and of varying quality and effectiveness across the sector.³ We agreed with the evaluation's recommendation that there was a compelling case for further regulation to tackle these issues, in line with our strategic goal to address harassment and sexual misconduct.⁴ We therefore consulted on regulatory proposals.
9. We received 261 responses to our consultation from students and their representatives, higher education providers, mission groups and other stakeholders. The proportion of responses from students and their representatives was significantly higher than we typically receive for our consultations. There was broad support from the majority of respondents to introduce most of the proposals we consulted on. This report discusses how feedback from these responses informed our regulatory approach, and our judgement about whether our proposals were likely to have any unintended consequences.
10. We would like to thank all those who took the time to consider and respond to the questions in the consultation or provided feedback at our webinars and roundtables. We particularly appreciate those who have responded and who have personal experience of harassment or sexual misconduct as we recognise that these are difficult and sensitive issues to discuss. We have carefully considered all the responses we received, including those partially completed and these insights assisted our decision-making.
11. We know harassment and sexual misconduct are serious issues affecting students. Data from 2022 shows that full-time students were more likely to have experienced sexual assault in the past year than any other occupational group.⁵ While these issues can affect all students, evidence suggests that they disproportionately affect students with certain protected characteristics, for example, women report incidents of sexual misconduct more often than men. The Equality and Human Rights Commission inquiry into racial harassment, published in October 2019, highlighted that 24 per cent of ethnic minority students reported experiencing racial harassment on campus.
12. To better understand the prevalence of sexual misconduct in English higher education and how this data could be collected, we launched a pilot prevalence survey in September 2023. The survey was the first of its kind to be run at scale in the UK, and asked students at 12

² See Annex D of the OfS' 'Consultation on a new approach to regulating harassment and sexual misconduct in English higher education', 2023. Available at: <https://www.officeforstudents.org.uk/publications/consultation-on-a-new-approach-to-regulating-harassment-and-sexual-misconduct-in-english-higher-education/>.

³ 'Evaluation of the Initial Impact of the Statement of Expectations – Final Report', 2022. Available at: <https://www.officeforstudents.org.uk/publications/evaluation-of-statement-of-expectations-final-report/>.

⁴ See www.officeforstudents.org.uk/publications/office-for-students-strategy-2022-to-2025/.

⁵ 'Sexual offences prevalence and victim characteristics, England and Wales', Office for National Statistics, 2022. Available at: <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/sexualoffencesvictimcharacteristicsenglandandwales/yearendingmarch2022>.

universities about their experiences of sexual misconduct and how it has affected their lives and studies. Some of the data from this survey is available in Annex D and a report on the wider findings from the pilot survey, as well as the data dashboard are available on our website.⁶

13. 20 per cent of students responding to the pilot survey had experienced unwanted sexual behaviour in the past year. This paints a worrying picture, and we remain committed to working to ensure that students do not experience sexual misconduct. Students' responses to this survey have helped inform our decisions about the new condition of registration. We would like to thank all the universities that participated, and we are now considering the next steps for this important quantitative work.

Summary of decisions

14. After carefully reviewing all the responses, alongside other evidence including the results of our pilot prevalence survey and student poll, we have decided to continue with the majority of the proposals as set out in the consultation document. However, we have made some significant changes to the requirements of the condition. Some of these are referred to above, but we have provided a more detailed summary of the requirements in the table below:

Proposal	Decision
A – Introduce a new general ongoing condition of registration	<p>We have decided to implement a new general ongoing condition of registration. We have amended the requirements in the condition and guidance in several areas, which are reflected below.</p> <p>We have made a clarification to the scope of the condition to explain that it covers subject matter relating to incidents of harassment and/or sexual misconduct which affect one or more students (including the conduct of staff towards students, and/or the conduct of students towards students).</p> <p>We have made further explanatory changes to the guidance to explain that addressing harassment and sexual misconduct of students carried out by individuals who are neither staff nor students of a provider would be consistent with compliance with the condition.</p> <p>We have also explained in the guidance that harassment and sexual misconduct that is conducted online should be included in a provider's policies.</p>

⁶ See www.officeforstudents.org.uk/publications/sexual-misconduct-prevalence-survey-pilot-2023-evaluation/.

A – Definition for harassment	<p>We have decided to retain the definition of harassment as consulted on.</p> <p>We have made explanatory changes to the guidance to clarify that the reference to legal definitions does not bring with it a requirement for a provider to investigate incidents to a criminal level of proof in its own internal investigations. We have also clarified that providers should make clear to students and staff that any judgements reached as part of an investigation do not constitute a legal ruling on whether or not criminal activity has taken place.</p> <p>There is a further clarification to the guidance to explain that the intention of the definition of harassment for the purposes of this condition mirrors the definition in section 1 of the Protection from Harassment Act 1997, and section 26 of the Equality Act 2010, and extends this to capture harassment by one student of another student. We have further explained that this does not affect a provider’s obligations under the Equality Act 2010 and its compliance with those obligations.</p> <p>We have clarified the interaction between this and free speech requirements, as explained below in relation to Proposal D. We have added a further clarification to the guidance to explain that a provider should provide support to students who may have experienced harassment and sexual misconduct regardless of whether the provider considers that the incident meets the objective tests included in the Equality Act 2010 and the Protection from Harassment Act 1997.</p>
A – Definition for sexual misconduct	<p>We have decided to amend the definition of sexual misconduct to remove express reference to the Equality Act 2010 and Sexual Offences Act 2003.</p>
B – Requirement to maintain and publish a single document	<p>We have decided to proceed with this proposal apart from the following change:</p> <p>We originally proposed that a provider would be required to create a single document that comprehensively sets out its policies and procedures relating to incidents of harassment and sexual misconduct. Instead, we have decided to replace the single document with a requirement to maintain and publish a single comprehensive source of information, which is explained further below.</p>
B – Requirement to have minimum content requirements for the single document	<p>We have decided to proceed with no change to this proposal, except that it now applies to</p>

	the single comprehensive source of information as explained above.
B – Requirement to describe steps to make a significant and credible difference	<p>We have decided to proceed with no change. We have provided further clarification on the following:</p> <p>Our intention in requiring a provider to take multiple steps which (individually or in combination) make a significant and credible difference in protecting students.</p> <p>Our position in respect of confidentiality during investigations.</p> <p>Our expectations for student training.</p>
B – Requirement to have content principles for the single comprehensive source of information	We have decided to proceed with no change.
C – Requirements relating to capacity and resources	We have decided to proceed with no change.
D – Requirements relating to freedom of speech	We have decided to retain the freedom of speech principles and have included additional wording in the condition to further clarify the interface between harassment and freedom of speech. In particular, our definition of harassment, as it extends the concept of Equality Act harassment to include the conduct of students towards students, includes lawful speech and the additional wording clarifies that providers are not required to take a step that interferes with lawful speech in order to meet the requirements of the condition.
E – Requirements relating to restricting the disclosure of information about an allegation of harassment or sexual misconduct that involves or affects one or more students	<p>We have decided to proceed with a different approach to the preferred option set out in the consultation document.</p> <p>We have decided to impose requirements which prohibit a provider from entering into any provision that has the object or effect of preventing or restricting any student from disclosing information about an allegation of harassment or sexual misconduct. This restriction will not apply to agreements in place before 1 September 2024 and applies only to agreements made by a provider rather than including agreements made by third parties.</p>
F – Requirements relating to personal relationships between relevant staff and students	<p>We have decided to proceed with a different approach to the preferred option set out in the consultation document, which was to require providers to adopt a register of personal relationships between relevant staff members and students.</p> <p>The provision we have decided to proceed with means that a provider is required to include in its single comprehensive source of</p>

	<p>information one or more steps which could make a significant and credible difference in protecting students from any actual or potential conflict of interest and/or abuse of power.</p> <p>We have made clear in the condition that a ban on intimate personal relationships between relevant staff and students is deemed to be a step which could make a significant and credible difference in protecting students from any actual or potential conflict of interest and/or abuse of power.</p> <p>We have changed the term ‘personal relationships’ to ‘intimate personal relationships’ and amended the definition to remove financial dependency.</p> <p>We have amended the definition of ‘relevant staff member’ to those with direct academic or other direct professional responsibilities to provide greater clarity.</p>
G – Implementation	<p>We have decided to proceed with a different approach to implementing the new condition of registration.</p> <p>We have decided to adopt a two-stage approach to implementing the condition. The provision relating to restricting the disclosure of information takes effect on 1 September 2024.</p> <p>All other provisions in the condition take effect on 1 August 2025.</p> <p>This significantly extends the timeframe we had proposed, reduces regulatory burden and allows sufficient time for providers to engage with students in developing their approaches to meet our requirements.</p>

15. We have provided further detail about the changes we have made below, and have included a summary of the proposals and questions we asked in Annex C.
16. Higher education providers should continue to work to address these issues with the seriousness they warrant. They now need to ensure that their students are protected from harassment and sexual misconduct by meeting the requirements in our new condition of registration and by following the accompanying guidance. We will be hosting webinars with higher education providers and students to help ensure these requirements are well understood.

17. The new condition E6: Harassment and sexual misconduct and associated guidance can be found in Annex A of this document, and is published online.⁷

⁷ See www.officeforstudents.org.uk/for-providers/student-protection-and-support/harassment-and-sexual-misconduct/condition-e6-harassment-and-sexual-misconduct/.

Introduction

18. As the independent regulator for higher education in England, the OfS is uniquely placed to ensure providers tackle harassment and sexual misconduct by setting and enforcing sector-specific requirements.
19. Our new condition of registration will regulate harassment and sexual misconduct in higher education. It provides clarity about what students can expect from their university or college; to protect them from harassment and sexual misconduct and support them when incidents do occur. The condition of registration sets out requirements that all universities and colleges will have to meet in areas that include reporting, disciplinary processes and staff training.
20. This document explains the aspects of our consultation proposals that we are taking forward. We have carefully considered the feedback and points raised in responses and have made some significant changes as a result. These are explained in the relevant sections of this document. We commissioned Pye Tait Consulting to review consultation responses and produce a summary of respondents' views. The Pye Tait report is published alongside this response document.⁸ We also undertook a qualitative analysis of responses.
21. This document also explains how we have carefully considered the interaction of the requirements in the new condition with providers' obligations for freedom of speech and academic freedom. We have made further clarifications to the condition to help providers meet these responsibilities as they seek to prevent harassment and sexual misconduct.
22. Finally, the document explores some of the findings from a pilot poll and survey we commissioned to understand the prevalence of sexual misconduct in higher education – this is set out in Annex D and explored in more detail in a separate report.⁹ We have considered students' responses to these surveys as we have developed our new condition of registration.
23. Higher education providers should consider the new general ongoing condition of registration and accompanying guidance as the main source of information about what they are required to do, this can be found in Annex A. This document explains the rationale for our position and may include further useful information.

Conducting the consultation

24. This was a public consultation. A summary of our proposals and the questions included in the consultation can be found in Annex C. Respondents were asked to share their views by submitting written responses to an online survey.
25. The consultation asked respondents a series of 30 open questions and one closed question, as well as questions to capture the demographics of those responding. The main consultation questions focused on each of the seven proposed elements of the condition, as well as specific questions relating to unintended consequences and potential impacts on groups on

⁸ See www.officeforstudents.org.uk/publications/analysis-of-consultation-responses-and-decisions-consultation-on-a-new-approach-to-regulating-harassment-and-sexual-misconduct/.

⁹ See www.officeforstudents.org.uk/publications/sexual-misconduct-prevalence-survey-pilot-2023-evaluation/.

the basis of their protected characteristics. All questions were voluntary, so different response rates are recorded for different questions.

26. We received 261 responses. Most of these responses were submitted through the online survey, with some respondents also independently publishing the response they submitted. Eleven respondents submitted their response to us directly and a small number of responses were received after the published deadline, which were included in the analysis.
27. In addition to the consultation, we also held discussions with sector representative bodies and other stakeholders, hosted online consultation events for providers and students to support their understanding of the proposals, and facilitated online and in-person roundtable engagement sessions with students and student representatives. We have considered the views shared during these sessions alongside the formal consultation responses in coming to our decisions.

Response to the consultation

28. In this document, we summarise and respond to the themes and key points made by respondents. We also set out the final decisions we have made following our consideration of the consultation responses and other relevant factors, such as the findings of research we commissioned and studies that became available after we published our proposals.
29. The majority of responses were collective responses submitted by or on behalf of higher education providers (38 per cent). 17 per cent of responses were from students or student representative bodies which represents a significant increase in the number of responses the OfS usually receives from this category of respondents. We also received responses submitted in a personal capacity from individuals working in specialist roles in the higher education sector (17 per cent) and from advocacy groups, sector and higher education professional bodies and third sector or private organisations (13 per cent). The remaining responses were categorised as 'other' or 'not specified' and accounted for 16 per cent of responses.¹⁰
30. The summary of responses by Pye Tait explains that some respondents provided comments which 'agreed' with one aspect of one proposal and 'disagreed' with a different aspect of the same proposal, while others provided comments but did not confirm whether they agreed or disagreed with the proposal. Therefore, agreement and disagreement totals may not equal one hundred percent. As many of the proposals were connected to each other, comments about one proposal were frequently repeated in response to others. To avoid duplication in this document we have, where appropriate, set out the respondents' views and our response under the proposal to which they primarily relate.
31. In making final decisions on our proposals, the OfS has had regard to consultation responses and relevant matters including its general duties under section 2 of the Higher Education and Research Act 2017 (HERA) and other relevant factors. Our review of matters to which we have had regard in making these decisions can be found at Annex B.

¹⁰ Percentages are rounded and therefore, may not add to 100 per cent.

Overarching themes from the analysis of responses

32. Overall, respondents to the consultation were positive, with five out of the seven distinct proposals supported by most respondents. Almost all students, student representatives and individuals responding from higher education providers supported the proposal to introduce a new condition of registration focused on tackling harassment and sexual misconduct. However, most of the responses from providers, or those representing providers, did not agree with this proposal.
33. We have outlined the overarching themes below and indicated where aspects of these particular themes are also explored elsewhere in more detail in this document. In this section, we have provided general responses to comments made in relation to:
 - a. regulatory overreach
 - b. regulatory burden
 - c. institutional autonomy
 - d. students studying outside the UK
 - e. requests for good practice
 - f. protected characteristics
 - g. monitoring and enforcement
 - h. taking a trauma-informed approach.

Regulatory overreach

34. Throughout the consultation responses, some commented that they considered that the proposal to implement a new condition on harassment and sexual misconduct was not within the OfS's remit and therefore was regulatory overreach. This relates to the overall proposed condition as well as specific elements. Key reasons for this include respondents considering that issues relating to harassment and sexual misconduct are not specified within the OfS's regulatory duties in HERA. Some respondents argued that the OfS should focus primarily on the quality of teaching rather than on what they regarded as separate pastoral or welfare matters. Others suggested that the proposals were too prescriptive, and that regulation was not the right approach to address issues related to harassment and sexual misconduct.
35. We address comments about regulatory scope and overreach in our response to Proposal A on whether to impose a condition of registration in relation to harassment and sexual misconduct. We discuss the OfS's remit and how these requirements are consistent with our powers and duties within the 'matters to which we have had regard in making this decision' section of this document in Annex B. In short, we consider that we do have a remit to regulate in this area, particularly as section 5(1) of HERA sets out a duty to 'determine and publish [...] the general ongoing conditions of registration' and we have a broad power to determine the

subject matter of any conditions. We consider that the risk posed to students by not being sufficiently protected from harassment and sexual misconduct, and the uneven progress by the sector in tackling these issues through self-regulation, is such that regulatory intervention in this area is appropriate.

36. As set out in the introduction of this document, we have already sought to address this issue by encouraging self-regulation. Evidence has suggested that further regulation is needed in this area, particularly the independent evaluation of our statement of expectations and the evidence set out in Annex E of our consultation and Annex D of this document.¹¹ This includes evidence from our pilot poll and prevalence survey on sexual misconduct. The consultation proposals and our decision to introduce a new condition of registration, and the scope of the provisions within that condition, have been developed to address the inconsistent and insufficient progress found by the evaluation, as well as other evidence demonstrating the significance of harassment and sexual misconduct in English higher education.

Institutional autonomy

37. Section 2(1)(a) of HERA sets out that, in performing its functions, the OfS must 'have regard to the need to protect the institutional autonomy of English higher education providers'. Those who commented on institutional autonomy were primarily higher education providers and mission groups and their main concerns related to what they considered to be 'overly prescriptive' requirements in the proposals. We have listened to these comments, particularly where the nature of the provisions would be likely to increase regulatory burden on providers, and have made some changes in response.
38. However, we consider that the requirements that we have imposed through this new condition of registration are not overly prescriptive. We have ensured that there is significant room for interpretation within the requirements we have set, not least because we are aware that the higher education sector is large and diverse, varying considerably from specialist micro-providers to the largest multi-faculty universities.

Students studying outside the UK

39. Respondents identified aspects of the proposals that they considered would present difficulties in relation to students studying outside the UK. The three main areas of concern were:
- a. the use of definitions based in UK legislation
 - b. training students outside the UK
 - c. managing relationships between staff and students outside the UK.

¹¹ See 'Evaluation of the Initial Impact of the Statement of Expectations – Final Report', 2022. Available at: <https://www.officeforstudents.org.uk/publications/evaluation-of-statement-of-expectations-final-report/> and Annex E of the OfS' 'Consultation on a new approach to regulating harassment and sexual misconduct in English higher education', 2023. Available at: <https://www.officeforstudents.org.uk/publications/consultation-on-a-new-approach-to-regulating-harassment-and-sexual-misconduct-in-english-higher-education/>.

40. The OfS takes the view that the same regulatory protection should apply for all students of a provider, including those studying overseas. Some respondents suggested that using definitions drawn from UK legislation would be inappropriate for international contexts. Where we rely on definitions from UK law, we are not suggesting an extension of the scope of that legislation itself. Rather, we expect that providers' policies should reflect these definitions and that they should be used when a provider considers whether its policies have been breached.
41. It is for providers to determine whether additional policy wording is required when dealing with cases overseas, in order to meet overseas legal or regulatory requirements.
42. In relation to student and staff training and student support, providers will need to consider how to best meet the requirements of the condition, including for students and staff outside the UK. As we explain in the section on student training, students may be trained using online tools as long as the training is evidence-based, credible and allows for sufficient student engagement to meet the aims. Providers delivering courses to students outside the UK are likely to already have mechanisms in place to support those students.
43. Our revised approach to intimate personal relationships between staff and students provides providers greater flexibility in the steps they take in this area. A provider will need, as part of this, to set out how its policies apply to relevant staff outside the UK.

Requests for further guidance or examples of best practice

44. Several respondents asked for further guidance, including examples of good practice and/or case studies, on all of the requirements as set out in the consultation document. This document aims to explain our rationale for maintaining or amending the proposed requirements, and does in places provide further information or examples of potential behaviours for compliance.
45. We have carefully considered whether there would be benefit in providing further guidance at this time. Given the diversity of the sector and the diversity of the issues that may arise in connection with harassment and sexual misconduct, we are not providing case studies now. This is because it is for providers to develop their own policies and procedures within the parameters of the requirements, and we do not wish to encourage case studies to be used as 'templates' for compliance. This would mean that providers would not adequately consider their own contexts, rates of prevalence, and the work and development they need to undertake to understand how these requirements are best addressed in practice.
46. However, this does not prevent us from sharing examples of cases in the future, and we will continue to consider this issue.

Impact on individuals with protected characteristics

47. We asked a question relating to how the proposals may affect individuals on the basis of their protected characteristics¹² and received 116 responses. Where issues have been raised about potential impact on individuals with relevant protected characteristics in relation to

¹² Some terms used by consultation respondents may not be consistent with the definitions of the protected characteristics in the Equality Act 2010 and may capture characteristics which are not protected. However, we consider that they are closely related and should be considered in relation to equality matters.

specific proposals, we have considered these in the relevant sections. We have addressed general issues below.

48. More than half (62 per cent) suggested considerations for various groups on the basis of protected characteristics ought to be included or better explained in the proposals. 17 per cent of these respondents suggested that harassment and sexual misconduct have a disproportionate impact on individuals on the basis of their protected characteristics, and so the proposals may have a similar impact. These respondents often suggested that (for example) women and LGBT+¹³ people experience harassment and sexual misconduct to a greater degree.
49. These respondents tended to suggest that additional guidance may be required about these issues. In addition, a small number of respondents also suggested that the OfS and providers should take an approach that considers how students with multiple protected characteristics may be further affected, both through preventative work and in data analysis.
50. As demonstrated in Annex E of our consultation and in Annex D of this document, we recognise that individuals with certain protected characteristics are more at risk of being affected by harassment and sexual misconduct. This is reflected in the inclusion of the Equality Act 2010 definition of harassment in our definition of harassment, which refers explicitly to conduct which is related to a relevant protected characteristic.
51. More generally, the purpose of the new condition is to protect all students regardless of their characteristics. The requirements placed on providers will have the effect of improving prevention, protection and support for students who have a relevant protected characteristic and those who do not. In the new condition, we have set out minimum content requirements for a provider's comprehensive source of information including that it should set out multiple steps which could (individually or in combination) make a significant and credible difference in protecting students from behaviour that may amount to harassment and/or sexual misconduct.
52. The condition guidance explains that whether steps are significant and credible will depend on the context for an individual provider because the steps it takes will need to be informed by the nature and severity of the issues its students face. In order to properly address these issues, a provider will need to understand its student population and the extent to which its students may be likely to experience harassment or sexual misconduct. We expect that this will include understanding the impact on students with relevant protected characteristics and taking appropriate action.
53. Some respondents asked the OfS to undertake and publish an equality impact assessment of the proposals. We have engaged with equality considerations throughout our policy development and decision-making process, as well as during consultation phase. We explicitly called for responses on the potential impact of these proposals on individuals on the basis of their protected characteristics. Throughout these processes, we have had proper regard to matters within the scope of the Public Sector Equality Duty (PSED) and other relevant duties and more detail about this can be found at Annex B.

¹³ The term LGBT+ captures characteristics of sexual orientation and gender reassignment but due to its breadth may also capture characteristics which are not covered by the Equality Act 2010.

Monitoring and enforcement

54. Some respondents were unsure about how we would monitor compliance with the condition and sought more guidance on how the proposals would be enforced. We expect to monitor and enforce compliance with the requirements in ongoing condition E6 in the same way that we monitor and enforce our other conditions of registration. This will be through intelligence and evidence-gathering practices, such as the receipt of reportable events and notifications, information that may come from third parties, as well as other data that we may receive from time to time.
55. Alongside this report we have published the report and outcomes from our pilot prevalence survey into sexual misconduct.¹⁴ More details and data from the survey can be found in the report and within this document. This data provides useful regulatory intelligence about these issues at a sector-level which can be used to support risk-based regulation of registered providers. We have not yet made a decision about next steps, but if provider-level prevalence data is collected in the future, we may also use this data to inform our view of risk of non-compliance for individual providers.
56. The guidance to the condition (Annex A, paragraphs 63-68) sets out our approach to information-gathering, assessment of evidence and enforcement.

Regulatory burden

57. When considering introducing a new condition of registration, we anticipated that we would receive comments about additional regulatory burden, because a new condition would inevitably create a level of additional burden for providers. Throughout the consultation development process, and in reviewing responses to the consultation, we have considered regulatory burden and how it could be reduced where possible. However, there is a need to balance the benefits to students of regulating harassment and sexual misconduct in higher education with the benefits to providers of reducing burden.
58. The core issues raised regarding regulatory burden relate to:
 - a. the perception that the condition will create substantial implementation and administrative burden amidst resource constraints across the sector
 - b. disproportionate impact on smaller and specialist providers due to resource and capacity constraints
 - c. timelines being incompatible with providers' capacity and decision-making
 - d. the addition of further requirements which are perceived as duplicating existing requirements (in relation to free speech and financial viability and sustainability).
59. We have carefully considered all comments about regulatory and resource burden that would be associated with the new condition. We have made a number of changes to reduce the

¹⁴ See www.officeforstudents.org.uk/publications/sexual-misconduct-prevalence-survey-pilot-2023-evaluation/.

level of burden where we consider these changes would not have a significant impact on delivering the regulatory aims of the condition. This includes:

- a. changes to the requirement for a single document to make it more flexible;
- b. our approach to addressing relationships between staff and students;
- c. amending requirements in relation to non-disclosure agreements; and
- d. providing a significantly longer implementation timeframe than proposed in the consultation for the majority of provisions.

60. The longer implementation timeframe will reduce regulatory burden by affording providers more time to ensure they have the capacity and resources to meet the requirements of the new condition, and that they can carefully consider their policy decisions and engage with their students to arrive at more effective policies. Full details of these changes can be found in the relevant sections of this document. Further information about how we have had regard to matters connected to regulatory burden can be found in Annex B.

Taking a trauma-informed approach

61. Several respondents commented that they did not consider that the proposals took what they referred to as a 'trauma-informed approach' when dealing with harassment and sexual misconduct. They pointed to the use of terminology such as 'victim' and 'perpetrator', and the proposal to require those who have prior experience of harassment or sexual misconduct to attend training sessions.
62. We have taken these considerations seriously. The term 'trauma-informed approach' has been given a working definition by the government for health and care settings,¹⁵ but not for education or higher education. The new condition of registration means that higher education providers are required to ensure that their investigatory and decision-making processes are credible, fair and otherwise reflect established principles of natural justice. We consider that in implementing effective policies to tackle harassment and sexual misconduct, a provider would need to consider how it could sensitively engage with those who may have experienced harassment and sexual misconduct.
63. We have amended the terminology we use in the condition and guidance. In the consultation we described individuals involved in incidents as 'actual or potential victim' and 'actual or alleged perpetrator'. In the new condition of registration and accompanying guidance, we have amended the wording 'actual or potential victim' to 'students who have alleged and/or experienced incidents of harassment and/or sexual misconduct'. We consider that this wording appropriately responds to these points in consultation responses. While this is the wording we have used in our condition and guidance, providers may use whatever wording is appropriate in their own policies and communications with students. This may be an area where a provider could particularly benefit from engaging with its students to understand the language that might be appropriate in its own context.

¹⁵ See <https://www.gov.uk/government/publications/working-definition-of-trauma-informed-practice/working-definition-of-trauma-informed-practice>.

64. We have also clarified the guidance in relation to training for those who have experienced harassment or sexual misconduct, and so may find this training distressing. While training should be mandatory, providers should use their judgement in relation to individual students who may have good reasons for not participating, for example, a student who has previously experienced harassment or sexual misconduct.

Proposal A: Introduce proposed ongoing condition E6 (harassment and sexual misconduct)

Proposal to introduce proposed ongoing condition E6

Consultation questions

1a. Do you agree or disagree with the proposal to introduce a new general ongoing condition of registration relating to harassment and sexual misconduct? Please give reasons for your answer.

1b. Do you have alternative suggestions to the proposal to introduce a new general ongoing condition of registration relating to harassment and sexual misconduct? If so, please explain and provide the reasons for your view.

Summary of respondents' views

65. Proposal A set out our proposal to introduce a new ongoing condition of registration relating to harassment and sexual misconduct which would place regulatory requirements in this area on registered higher education providers. We also proposed definitions for the terms 'harassment' and 'sexual misconduct'.
66. There was general support for the proposal, with 58 per cent of respondents agreeing to some extent with our proposal to introduce a new ongoing condition of registration relating to harassment and sexual misconduct, and 43 per cent disagreeing to some extent. Where individuals agreed 'to some extent', this meant that they either agreed in full with the proposal to introduce a condition and the proposed content of condition E6, or they agreed that more needed to be done to reduce harassment and sexual misconduct in higher education but did not necessarily agree with condition E6 as drafted in the consultation. Where individuals disagreed to 'some extent', this meant that they disagreed with either some or all elements of the proposals. Points made in relation to the content of the proposed condition are addressed in the relevant sections in this document.
67. There was strong support from students and student representative bodies who responded to this question, with 95 per cent agreeing with the proposal to introduce a new condition. 75 per cent of individuals responding from higher education providers supported the proposal. However, 70 per cent of collective responses from universities and colleges – i.e. responses that represented an institutional view – disagreed with the proposal to introduce a condition on harassment and sexual misconduct, as did 80 per cent of the sector representative bodies responding. Many of those respondents who disagreed with the proposal to introduce a condition still provided feedback on the substantive content of each respective proposal.
68. Respondents who agreed that the OfS should introduce a new condition of registration considered that harassment and sexual misconduct towards students was an important issue that needed to be tackled and enforced through regulation, and that regulating in this area would address concerns that students or applicants might have about reporting incidents and the obligations on providers to take reports seriously. Others thought that a new condition of

registration would help to increase consistency of effort and approaches across providers by setting expectations that applied to all providers, and enforcing against these where providers were found to not be taking sufficient action. It was also felt that this would lead to greater transparency about the steps being taken by a provider to tackle harassment and sexual misconduct, partly because a provider would be required to provide this transparency under Proposal B relating to minimum content requirements.

69. The main arguments made by those who disagreed with the proposed new condition were that:
- a. Self-regulation would be more appropriate, such as through the statement of expectations we published in April 2021.
 - b. The proposals go beyond the remit of the OfS by intervening in pastoral or welfare matters such as harassment and sexual misconduct.
 - c. The requirements could introduce a significant and unnecessary regulatory burden on providers during a time where their resources are already under significant pressure.
70. In addition, points were made in relation to aspects of the framing of the proposed condition, in particular:
- a. That proposed condition E6 could imply that providers would need to assess whether criminal activity had taken place, because aspects of our proposed definitions came from criminal legislation (e.g. the Sexual Offences Act 2003).
 - b. That proposed condition E6 was overly prescriptive, not risk-based, and did not allow sufficient flexibility for providers to adapt it to their respective contexts.
71. Some of the respondents who disagreed in part with the proposals suggested options for minimising the potential burden of ensuring compliance with the new condition, such as extending or staggering the timeline for implementation. We have considered these responses under the section on Proposal G, which covers implementation.
72. 54 per cent of respondents sought more guidance on what the condition of registration would require, for example, how the proposals would be enforced, what data providers would be required to publish and what best practice might look like in adhering to the condition.

Our response

73. Comments relating to some of these matters are covered elsewhere in this document in sections relating to specific proposals.
74. We recognise that the majority of collective institutional responses from higher education providers to the consultation did not support the introduction of condition E6, with many raising concerns about regulatory burden and institutional autonomy. However, students and student representatives who responded to the consultation overwhelmingly supported the proposal to introduce a new condition of registration relating to harassment and sexual misconduct. In reviewing the responses to the consultation, we have considered these views carefully, in the context of the OfS's general duties in HERA and the principles of good practice in the Regulators' Code. However, we do not consider that the concerns about

regulatory burden and institutional autonomy outweigh the risks to students should we not proceed with the proposed condition of registration. We consider that the benefits to students from the implementation of condition E6 outweigh the regulatory burden created for providers and we consider that this intervention is needed to afford adequate protection for students from harassment and sexual misconduct. Further information about how we have considered regulatory burden and how we have had regard to the OfS's general duties, the Regulators' Code and the PSED can be found in Annex B.

75. Before publication of the OfS's statement of expectations many individual and sector initiatives had tried to address harassment and sexual misconduct over several years, including the Changing the Culture work undertaken by Universities UK from 2016.¹⁶ An independent review of the OfS statement of expectations found evidence to suggest that previous attempts to enable self-regulation have not been sufficient to deliver effective and timely change in an area where many students find themselves vulnerable and at risk.¹⁷ The new condition is designed to ensure that students are better and more consistently protected from harassment and sexual misconduct, and supported should incidents of either occur, and we have therefore placed significant weight on this policy aim.
76. The OfS is required under section 5(1) of HERA to 'determine and publish [...] the general ongoing conditions of registration'. Section 13 of HERA sets out other conditions of registration that the OfS may include, but this is not intended as an exhaustive list, and it is for the OfS to determine where conditions should be introduced, and the subject matter of those conditions. It is clear from the evidence available and set out in the consultation in Annex E and in Annex D of this document¹⁸ that incidents of harassment and sexual misconduct have a significant impact on students and their experience of, and participation and success in, higher education¹⁹ and that incidents are more likely to happen to students with certain protected characteristics.
77. The new condition is therefore consistent with the OfS's general duty to have regard to the need to promote equality of opportunity in connection with access to, and participation in, higher education provided by English higher education providers.²⁰ It sets a standard that all providers must meet to prevent incidents of harassment and sexual misconduct, and to support students when incidents do occur.
78. We also think intervening in this area is supported by the evidence that harassment and sexual misconduct are concerns in the higher education sector. We set out much of this evidence in the consultation and summarise further evidence in Annex D. This includes the

¹⁶ 'Changing the culture report', Universities UK, 2016. Available at: <https://www.universitiesuk.ac.uk/what-we-do/policy-and-research/publications/features/tackling-harassment/changing-culture-report>.

¹⁷ 'Evaluation of the statement of expectations', OfS, November 2022. Available at: www.officeforstudents.org.uk/publications/evaluation-of-statement-of-expectations-final-report/.

¹⁸ See evidence presented at Annex E of our consultation and Annex D of this document

¹⁹ See UniSAFE, 2022, 'Gender-based violence and its consequences in European Academia'. Available at: https://unisafe-gbv.eu/wp-content/uploads/2022/11/UniSAFE-survey_prevalence-results_2022.pdf. See also Equality and Human Rights Commission, 2019, 'Racial harassment in higher education: our enquiry'. Available at: <https://www.equalityhumanrights.com/en/ymchwiliadau-ac-archwiliadau/racial-harassmenthigher-education-our-enquiry>.

²⁰ See <https://www.legislation.gov.uk/ukpga/2017/29/contents>.

findings from our pilot prevalence survey to investigate the prevalence of sexual misconduct, which was conducted in autumn 2023.²¹ We also commissioned Savanta to conduct a poll on students' experiences of sexual misconduct.²² The key findings from the pilot prevalence survey and the poll are summarised in Annex D.

79. As we set out in our consultation, we accept that condition E6 will impose some additional regulatory burden on all registered higher education providers. This consultation analysis and response document:
- Sets out how we have considered opportunities to minimise regulatory burden on providers as far as possible.
 - Takes on board the views of respondents in relation to each provision of the consulted-on version of condition E6, while still achieving our overall policy intent to address harassment and sexual misconduct.
80. The level of additional regulatory burden will vary depending on whether a provider has already taken steps to address harassment and sexual misconduct. Where a provider has done so, we expect that it may already meet many of our requirements in this area, or will have less work to do to fully meet the requirements. Where a provider has not taken any steps, or where the steps it has previously taken do not meet our requirements, it will experience an element of extra burden as it will need to consider and introduce new or additional approaches to meet our requirements.
81. The provisions have a significant element of flexibility where providers can meet the requirements in a way which best suits their context. For example, providers can decide what specific steps they may take to make a significant and credible difference in protecting their students. They can also decide how to best train students and staff in order to ensure that harassment and sexual misconduct can be identified, that students are appropriately supported, and that incidents are managed.
82. In response to those asking for more guidance relating to the condition and how the condition will be enforced, we have provided detailed guidance to accompany condition E6, including some clarifications about the scope of the condition. We expect to monitor and enforce the requirements in ongoing condition E6 in the same way that we monitor and enforce our other conditions of registration, as set out in the regulatory framework.

Decision

83. We have therefore decided to implement the amended condition E6 as a new general ongoing condition of registration. The new condition will be imposed on all registered providers, with the majority of the provisions coming into effect on 1 August 2025. The decisions related to individual proposals and provisions are set out in the following sections of this document.

²¹ See www.officeforstudents.org.uk/publications/sexual-misconduct-prevalence-survey-pilot-2023-evaluation/.

²² See www.officeforstudents.org.uk/publications/sexual-misconduct-prevalence-survey-pilot-2023-evaluation/.

84. We have made a clarification to the scope of this condition to explain that it covers subject matter relating to incidents of harassment and/or sexual misconduct which affect one or more students (including the conduct of staff towards students, and/or the conduct of students towards students).
85. We have made further explanatory changes to the guidance to explain that addressing harassment and sexual misconduct of students carried out by individuals who are neither staff nor students would be consistent with compliance with the condition.
86. We have added a further clarification to the guidance to explain that a provider should provide support to students who may have experienced harassment and sexual misconduct regardless of whether the provider considers that the incident meets the objective tests included in the Equality Act 2010 and the Protection from Harassment Act 1997.
87. We have also explained in the guidance that harassment and sexual misconduct that is conducted online should be included in a provider's policies.

Proposal A: Definition of harassment

88. The policy intention for the proposal for a single definition of harassment was to better enable the OfS to enforce a consistent level of protection for students across the whole higher education sector and to provide clarity to students about what their providers would consider as harassment. We intended that the scope of the definition, in combination with our proposals in respect of the freedom of speech principles, would ensure that providers deliver their obligations to support students and take credible steps to reduce harassment while not affecting providers' obligations relating to freedom of speech.
89. The proposed definition for harassment in the consultation was:

h. 'harassment' has the meaning given in section 26 of the Equality Act 2010 and section 1 of the Protection from Harassment Act (PHA) 1997 (in its entirety, and as interpreted by section 7 of the Act).

90. Section 26 of the Equality Act 2010²³ defines harassment, including sexual harassment. We have summarised this definition as:

'harassment, including sexual harassment, includes unwanted behaviour or conduct which has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment because of, or connected to, one or more of the following protected characteristics: age; disability; gender reassignment; race; religion or belief; sex; and sexual orientation.'

²³ Equality Act 2010, available at: <https://www.legislation.gov.uk/ukpga/2010/15/contents>.

91. Section 1 of the Protection from Harassment Act 1997 (PHA 1997)²⁴ prohibits harassment towards any person. In the consultation, we summarised this as:

‘a course of conduct conducted on at least two occasions that harasses one other person, or a course of conduct that harasses two or more persons at least once each. References to harassing a person include alarming the person or causing the person distress.’

Consultation questions

2a. Do you agree or disagree that the definition of harassment in proposed condition E6 should have the meaning given in section 26 of the Equality Act 2010 and section 1 of the Protection from Harassment Act 1997? Please give reasons for your answer.

2b. Do you have alternative suggestions to the proposal in question 2a that you think may be more appropriate? If so, please explain and give reasons for your view.

Summary of respondents' views

92. 227 respondents commented on the proposed definition of harassment, of which over half (57 per cent) agreed or partially agreed with the proposed definition, and around two-fifths (42 per cent) disagreed or partially disagreed. Some respondents to this question did not indicate a level of agreement or argued both for and against the proposal.
93. Those who agreed with the proposed definition of harassment, liked the clarity that the definition provided, found that linking it to legislation ensures the wording is clear and reduces scope for ambiguity and misinterpretation, and said that having sector-wide standard wording would improve consistency across the sector.
94. Those who disagreed with the proposed definition of harassment argued that it was too restrictive and/or was too vague. Respondents suggested that it lacked clarity and could result in a failure to act on unacceptable behaviour where the behaviour does not meet the requirements in the definition. Some respondents suggested that the use of legislation may make the definition difficult for students to understand. Some respondents were also concerned that the Protection from Harassment Act 1997 required ‘at least two occasions’ for incidents to be defined as harassment.
95. Some respondents also pointed to other forms of harassment that they did not consider were included in the proposed definition, including:
- harassment unrelated to protected characteristics
 - domestic violence and abuse
 - online harassment and harm (particularly identified by students at roundtable discussions)

²⁴ Protection from Harassment Act 1997, available at: <https://www.legislation.gov.uk/ukpga/1997/40/contents>.

- stalking
- verbal and/or non-physical harassment
- bullying
- microaggressions
- modern slavery
- voyeurism (photos without consent, 'up-skirting', etc.).

96. In response to our question about the impact of proposals on individuals with protected characteristics, two respondents cited general concerns about whether the definition of harassment sufficiently captures all harassing behaviour on the grounds of protected characteristics. One respondent suggested that the definitions in the Equality Act 2010 and the Protection from Harassment Act were contradictory or incompatible in regard to whether the behaviour must relate to a particular protected characteristic for the incident to be defined as harassment.
97. When asked for further suggestions, 67 per cent of those who responded said that the definition needed refining. 27 per cent suggested that the definition should not be linked to criminal legislation and suggested that only the Equality Act 2010 should be used in order to prevent providers thinking that they must work to a criminal standard of proof when investigating allegations. These respondents argued that this could lead to providers concluding that an individual has breached the Protection from Harassment Act 1997 without having investigated the incident and/or behaviour to a criminal standard. Some respondents said that the technical language in the legislation may be inaccessible to students, and/or that changes could be made to simplify the wording.
98. A small number of respondents, mostly higher education providers, suggested that using definitions defined by legislation may be difficult to apply in the context of partnerships with organisations outside the UK, which are not bound by the same laws and may have differing local laws related to protected characteristics and harassment.
99. One respondent argued that students have no duties under the Equality Act 2010 as they are deemed to be third parties. This respondent asserted that universities cannot be required to hold students accountable for speech constituting harassment under section 26 of the Equality Act 2010 and that any insistence by the OfS that the definition places a legal duty on providers to protect students and staff from harassment by other students might limit students' rights to freedom of speech within the law. We consider this point further in the section on Proposal D on freedom of speech.

Our response

100. We have carefully reviewed all of the responses about the definition of harassment. While the levels of agreement and disagreement with the proposed definition are relatively balanced, we consider that the main objections to the definition can be addressed through the guidance and clarifications about how we expect the definition to be used in practice.

101. We have sought to balance providing clarity about our requirements in order to deliver our policy intent, with giving providers autonomy to decide how these requirements could be met within their own context. At the same time, our approach to the definition of harassment means we can ensure an appropriate level of consistency across the sector so that all students can expect a certain standard of protection regardless of where they study.
102. The definition of harassment set out in section 26 of the Equality Act 2010 protects individuals from harassment that occurs because of, or connected to, a relevant protected characteristic. Not all harassment is based on relevant protected characteristics and so the inclusion of the Protection from Harassment Act 1997 is intended to require providers to also address these types of incidents. The Equality Act 2010 captures individual instances of harassment if related to a relevant protected characteristic.
103. This means that harassment is captured by the definition in the new condition if:
- a. There is one or more instance of harassment of a single individual that is related to a relevant protected characteristic in the Equality Act 2010;
 - b. There are two or more instances of harassment of a single individual, whether or not that harassment is related to a relevant protected characteristic in the Equality Act 2010; or
 - c. There is one or more instance of harassment of multiple individuals, whether or not that harassment is related to a relevant protected characteristic in the Equality Act 2010.
104. Harassment is not captured by the definition in the new condition if:
- a. There is a single instance of harassment of one individual that is not related to a relevant protected characteristic in the Equality Act 2010.
105. We consider that the definition is appropriate as it provides clarity about what providers should consider to be harassment.
106. We recognise the differences between the Equality Act 2010 and the Protection from Harassment Act 1997 in that the former requires a single incident in relation to a relevant protected characteristic and the latter requires at least two incidents. However, we do not consider that in practice these differences result in a contradictory definition and we think that using both in combination ensures protection for students who have a relevant protected characteristic and those who do not.
107. Many respondents who did not agree with the proposed definition made points about the use of the Protection from Harassment Act 1997, arguing that this would require a provider's investigation processes to meet a criminal burden of proof. The aim of using the wording from section 1 of the Protection from Harassment Act 1997 is to provide a definition of harassment that is consistent across providers and society at large and that does not restrict instances of harassment to those connected to a protected characteristic. We are using the definitions in section 26 of the Equality Act 2010 and section 1 of the Protection from Harassment Act 1997 to provide a standard set of definitions to ensure consistency across the sector. This does not

create a requirement for providers to undertake judicial processes and make legal judgements about harassment under UK law.

108. Some respondents suggested that drawing on legislation means that the language used to define harassment would be difficult for students to understand. We consider that the language set out in the Equality Act 2010 and the Protection from Harassment Act 1997 is clear and accessible. However, where concerns remain about the language used for the definition, providers may wish to develop 'student-friendly' explanations of the definitions or other activities. Providers that do so should ensure that these explanations do not impinge on freedom of speech in a way that breaches legal duties, including any under the Education (No 2) Act 1986, the Human Rights Act (1998) or HERA, and that they accurately capture the meaning and effect of the relevant Equality Act 2010 and Protection from Harassment Act 1997 provisions.
109. We have considered the comments about the application of the definition of harassment to students outside the UK. We recognise that definitions in English legislation may differ from legislation in other countries. We do not expect, however, that providers should seek to enforce section 26 of the Equality Act 2010 or the Protection from Harassment Act 1997 as though that legislation applies in another country. Instead, the definitions should be used to provide clear and consistent protections for students at English higher education providers, wherever they are based.
110. We do not consider that adding additional examples would aid compliance or understanding and have therefore not included further references to specific behaviours in the condition. Providers should consider whether incidents meet the definition and within their own policies.

Definition of harassment and freedom of speech

111. Some respondents suggested that the use of the Protection from Harassment Act 1997 and/or the Equality Act 2010 definitions for harassment would lead to an infringement of the rights of free speech in higher education settings. Our commitment to ensuring that these requirements do not impinge on free speech obligations is demonstrated by the inclusion of requirements relating to freedom of speech directly in the condition of registration (condition E6.8), to ensure that freedom of speech is considered and given proper weight in all cases. We have given further information about how the requirements of this condition intersect with providers' freedom of speech obligations in the section on Proposal D.
112. The definition of harassment proposed in the consultation referred in part to the Equality Act 2010 which places obligations on providers in relation to the conduct of their staff but not in relation to the conduct of their students as third parties. The intention of the proposed definition of harassment for the purposes of this condition of registration is to adopt a definition of harassment that mirrors the definition under section 1 of the Protection from Harassment Act 1997, and section 26 of the Equality Act 2010, and extends the latter to capture harassment by one student of another student. This does not affect a provider's obligations under the Equality Act 2010 or its compliance with those obligations. Instead, we are using the wording of section 26 of the Equality Act 2010 as a basis for defining the scope of harassment for the purposes of this condition of registration. Using the definition in this way is in line with the aim of the proposed condition we set out in our consultation: to 'ensure that students are protected from harassment and sexual misconduct to enable them to have an

experience of higher education that enriches their lives and careers.’²⁵ This is important as there is evidence indicating that students are likely to be the perpetrators of some forms of harassment against other students.²⁶

113. We recognise that this approach could potentially interfere with lawful free speech. However, we have sought to mitigate this impact by the inclusion of requirement E6.8. This stipulates that a provider must have particular regard to, and place significant weight on, the importance of freedom of speech within the law, academic freedom and tolerance for controversial views in an educational context or environment, including in premises and situations where educational services, events and debates take place. In practice this means that while a provider is required to have policies that address harassment between two students, the OfS is not condoning any restrictions of lawful speech.
114. The purpose of aligning the definition of harassment with existing legislation is to reduce regulatory burden, provide clarity about conduct that providers should consider to constitute, or not constitute, harassment, and to ensure that providers’ policies do not unlawfully interfere with an individual’s right to free speech within the law. In practice, this could mean that a provider may need to revise its current policies where they interfere with free speech.
115. The definition of harassment includes objective tests which have the effect of acting as safeguards for freedom of speech. Under the Equality Act 2010, in deciding whether conduct constitutes harassment, it is necessary to consider:
- the perception of the person who is at the receiving end of the conduct
 - the other circumstances of the case
 - whether it is reasonable for the conduct to have that effect.
116. Harassment, as defined under the Protection from Harassment Act 1997, also includes an objective test whereby harassment is committed only if:
- the perpetrator knows that their conduct amounts to the harassment of another; or
 - a reasonable person in possession of the same information would think that the conduct amounted to harassment.
117. In addition, the requirements of the Protection from Harassment Act 1997 and the Equality Act 2010 are, along with other legislation, relevant to what a provider would consider to be lawful speech. Our condition goes beyond the Equality Act 2010 in capturing harassment between two students, but it does not change the legal obligations the Equality Act 2010 places on providers. The requirements of this condition do not require restrictions that interfere with lawful speech. As explained in relation to Proposal D, we consider that the free speech principles included in this condition should help providers manage these obligations alongside one another.

²⁶ Evidence can be found in Annex D.

118. This year we consulted²⁷ on proposed regulatory guidance and other matters relating to freedom of speech, following the Higher Education (Freedom of Speech) Act 2023, which received royal assent in May 2023. At the point of publication of this report, the outcome of this consultation had not been published.
119. In relation to harassment, we have made changes to the approach we consulted on to provide clarity to providers about how condition E6 interacts with freedom of speech obligations. Further information about the freedom of speech principles can be found in the section on Proposal D.

Decision

120. We have decided to retain the definition of harassment that we consulted on and as set out in the Equality Act 2010 and Protection from Harassment Act 1997. This is because the definition is clear, well known, and provides opportunities for consistent practice across the higher education sector. We also consider that not linking the definition to legislation would create risks that providers inadvertently include definitions of harassment that impinge on freedom of speech in some instances.
121. However, we have updated the guidance to clarify that the reference to legal definitions does not bring with it a requirement for a provider to investigate incidents to a criminal level of proof in its own internal investigations. We have also clarified that providers should make clear to students and staff that any judgements reached as part of an investigation do not constitute a legal ruling on whether or not criminal activity has taken place.
122. The definition of harassment for the purposes of this condition of registration adopts a definition of harassment that mirrors the definition under section 1 of the Protection from Harassment Act 1997, and also section 26 of the Equality Act 2010. We have added a clarification to the guidance to explain that the intention is that the definition from the Equality Act is extended to capture harassment of one student by another student. However, the obligations placed on providers by the Equality Act 2010 have not changed and we do not expect a provider to consider behaviour by students or other third parties as part of the provider's compliance with the Equality Act 2010.
123. We have made updates to the provisions related to freedom of speech to make clear the relationship between a provider's obligations to address harassment and to take steps to secure freedom of speech within the law. These are explained in the section of this document related to Proposal D.

Proposal A: Definition of sexual misconduct

124. The policy intention for the proposal for a definition of sexual misconduct is to be clear about the nature of the requirements placed on a provider in relation to sexual misconduct, to help deliver a consistent level of protection for students across the whole higher education sector and ensure providers and students are clear about what constitutes sexual misconduct. We

²⁷ See www.officeforstudents.org.uk/consultations-on-free-speech/consultation-on-proposed-regulatory-advice-and-other-matters-relating-to-freedom-of-speech/.

considered that a single definition also better enables the OfS to enforce a minimum standard of protection for students in this area.

125. The proposed definition for sexual misconduct was:

o. **'Sexual misconduct'** means any unwanted or attempted unwanted conduct of a sexual nature and includes but is not limited to:

- i. sexual harassment as defined by section 26(2) of the Equality Act 2010, and
- ii. assault as defined by the Sexual Offences Act 2003, and
- iii. rape as defined by the Sexual Offences Act 2003.

Consultation questions

3a. Do you agree or disagree that the definition of sexual misconduct in proposed condition E6 should mean any unwanted or attempted unwanted conduct of a sexual nature and include but not be limited to the definition of 'sexual harassment' contained in section 26(2) of the Equality Act 2010 and rape and assault as defined by the Sexual Offences Act 2003? Please give reasons for your answer.

3b. Do you have alternative suggestions to this proposal that you think may be more appropriate? If so, please explain and give reasons for your view.

Summary of respondents' views

126. There were 221 responses to the questions about the proposed definition of sexual misconduct. Over half of respondents (55 per cent) agreed with some aspects, whereas a similar number of respondents (52 per cent) disagreed with some aspects. Some respondents chose to both agree and disagree with aspects of the proposal, which is why the percentage total is over 100 per cent.
127. The majority of students and student representative bodies (82 per cent) who responded to these questions agreed with the proposals, whereas higher education providers were more likely to disagree with the proposal (62 per cent), and six out of seven advocacy groups that responded also disagreed.
128. Reasons for agreeing with the proposal included 20 per cent of respondents stating that they found the definition logical and clear, and 10 per cent of respondents stating that having a single definition ensures consistency across the sector. It was also suggested, particularly by students and student representative groups (eight per cent) that the definition would protect victims by addressing serious issues such as exploitation and power imbalances.
129. The majority of those who disagreed with the proposal disagreed with the legal terminology used in the definition (39 per cent of those responding to this question, with a total of 52 per cent disagreeing with some elements of the definition of sexual misconduct), in particular the use of criminal definitions within the Sexual Offences Act 2003. They argued that higher

education providers cannot judge whether an incident is criminal in nature. Furthermore, the standard of proof for criminal cases is 'beyond reasonable doubt', and respondents argued that providers are not courts of law so are unable to judge casework to this level of certainty.

130. A small number of respondents suggested that the language in the proposed definition would be inaccessible to students. The same number of respondents also made points about some of the specific language, such as 'unwanted conduct', stating that this was vague and difficult to interpret. Two higher education providers argued that the legal definitions may discourage students from reporting 'less serious' forms of sexual misconduct as students may not view them as 'criminal'. In response to our question about the potential impact on individuals with protected characteristics, a small number of respondents suggested that sexual misconduct definitions using legal or criminal language could indirectly discriminate against women or individuals with other protected characteristics, due to a lack of confidence in reporting these issues.
131. Among those who provided further suggestions, approximately half commented on the language in the definition with 30 per cent suggesting the removal of references to criminal law as providers do not have jurisdiction to make judgements to a criminal level of proof. A similar number of respondents (22 per cent) asked for the language be simplified to 'plain English' to allow for better accessibility. 40 per cent recommended specific changes to the definition of sexual misconduct, with a small number suggesting that providers should be able to develop their own definitions appropriate for their context. Others, approximately 28 per cent, said that the OfS should provide clear expectations and guidance about how the definition is to be implemented.
132. A number of requests were made for additional definitions of particular types of sexual misconduct to be included, such as:
- a. Content relating to the Domestic Abuse Act 2021 (five per cent).
 - b. Sending unsolicited explicit messages or graphic images, or sharing private sexually graphic material of another person without their consent, which should include 'up-skirting' (5 per cent).
 - c. Lower-level, non-physical and verbal unwanted sexual advances, (four per cent).
 - d. Online and electronic forms of sexual misconduct (four per cent).
 - e. Grooming or coercion (e.g., financial, physical) (one per cent).
133. In response to our question about the impact of our proposals on individuals with protected characteristics, two respondents suggested there was insufficient focus on sexual and/or domestic violence which is likely to particularly affect students with certain protected characteristics.

Our response

134. We consider that a core policy aim of the condition is to ensure that the English higher education sector has a set of consistent standards when considering conduct that may amount to sexual misconduct. To allow providers to develop their own definition of sexual

misconduct would not meet this aim, as there would be no consistent level of protection for students.

135. While some respondents argued that the language used in legislation was inaccessible to students, 82 per cent of students and student representative bodies agreed with the proposed definition. A provider may include further examples of sexual misconduct if it considers that this would improve clarity for its students. However, any further examples must not contradict the definition included in the new condition. Providers should also carefully consider the free speech principles and the wider free speech obligations that apply to them.
136. In relation to responses asking for additional definitions of particular sexual misconduct to be included, we consider that it would not be of benefit to providers or students to extend the list of types of conduct that might amount to sexual misconduct. We consider that many of the behaviours listed by respondents are already captured under our updated definition. We have also set out in our guidance that this list is not intended to be exhaustive and that conduct that falls outside this list may still amount to sexual misconduct. We consider that extending the list to more specific cases risks creating the impression that only things specified on the list are included. The headline term of 'any unwanted or attempted unwanted conduct of a sexual nature and includes, but is not limited to' ensures that any behaviours that are not otherwise listed in the definition but are still considered to constitute sexual misconduct may be reported, and students are entitled to receive support in relation to them.
137. Providers will be permitted to provide further examples of activities meeting this definition in their policies and will remain able to extend their policies to cover a wider definition as long as they do not contradict or conflict with the definition in the condition, and as long as they properly reflect the free speech principles and wider free speech obligations that apply to providers.

Use of definitions from Sexual Offences Act 2003 and Equality Act 2010

138. A significant number of respondents cited the inclusion of the Sexual Offences Act 2003 as a reason for disagreement with the proposal. There were for two main reasons:
 - a. An assumption that use of this definition would require providers to investigate incidents to a criminal standard of proof.
 - b. A concern that the legal language is not accessible to students and may prevent students coming forward in some cases.
139. The reference in the consultation to legal definitions was not intended to set a requirement about the standard of evidence and proof used in a provider's own internal investigations. However, having considered the responses, we have removed the express references to the Equality Act 2010 and the Sexual Offences Act 2003 from the drafting of the condition. We consider that in relation to this definition, describing the behaviours captured by the legal definitions is sufficient and is clear for providers and students.
140. We have also considered the point made by respondents that criminal terms such as 'rape' and 'sexual assault' under the Sexual Offences Act 2003 could only be tested and determined by the criminal courts. However, in general usage, terms such as 'rape' and 'sexual assault' are clearly understood by the public, although in some cases this understanding may differ

from the detail in legislation. We are also aware that some providers are already using these terms in their policies. We continue to think it is helpful to use them, alongside 'sexual harassment', to illustrate the range of conduct covered by the condition.

Decision

141. We have decided to retain the definition of sexual misconduct that we consulted on but have removed express reference to the Equality Act 2010 and the Sexual Offences Act 2003. This is because we consider that the definition is sufficiently clear without these references.

142. Therefore, the new definition of sexual misconduct is as set out below:

E6.11

s. '**Sexual misconduct**' means any unwanted or attempted unwanted conduct of a sexual nature and includes, but is not limited to:

- i. sexual harassment;
- ii. sexual assault; and
- iii. rape.

143. We consider that this revised definition ensures clarity by having a single definition for the whole higher education sector, while ensuring that the definition includes other forms of sexual misconduct. The revised definition also removes confusion suggested by respondents about the use of criminal legislation because we have decided that those legal terms are not necessary in this instance to aid understanding or compliance.

144. The full text of the new condition of registration and the underpinning guidance can be found in Annex A.

Proposal B: Single document and minimum content requirements

145. Proposal B of our consultation set out that a registered provider should have to maintain and publish a single document that comprehensively covers policies and procedures on subject matter relating to harassment and sexual misconduct. We proposed eight minimum content requirements for this document. These would require a provider to take meaningful action to prevent and reduce harassment and sexual misconduct where it occurred towards its students. Providers would also have to recognise that the appropriate types of action would depend on a provider's context. We also proposed two 'prominence principles' for the single document, which can be summarised as saying:

- a. it should be published in a prominent location on the provider's website that is easily accessible to students (i.e. does not require a password to access)
- b. that a statement about the document and how to access it should be communicated directly to students and staff annually and included in a range of documents (e.g. prospectuses, student and staff handbooks).

146. Proposal B, therefore, was a comprehensive and wide-ranging proposal. We will discuss first the comments made in respect of the single document proposal and the decisions we have taken following our consideration of these comments. We will then turn to the proposed requirement to have content principles, to have minimum content requirements, and finally the minimum content requirements themselves.

Proposal to maintain and publish a single document (questions 4a and 4b)

Consultation questions

4a. Do you agree or disagree with the proposal that a provider should create a single document which comprehensively sets out policies and procedures on subject matter relating to incidents of harassment and sexual misconduct? Please give reasons for your answer.

4b. Do you have alternative suggestions to the proposal in question 4a? If so, please explain and provide the reasons for your view.

Summary of respondents' views

147. Respondents' views on the proposal to maintain and publish a single document were broadly split. 45 per cent of the respondents to question 4a supported the proposal for a single document while expressing concerns about how this might work in practice. 50 per cent disagreed with aspects of the proposal.

148. Students and student representative bodies particularly supported this aspect of the proposal. Those respondents who agreed with the proposal considered that it would provide transparency and clarity about a provider's approach, which could also support students and

others to hold a provider to account for the commitments it had made. They also considered that it should minimise the likelihood of either staff members or students needing to search through multiple documents to understand a provider's overall approach. Some respondents also suggested that a provider clearly setting out its approach should also reassure students that they could be confident in its approach to handling harassment and sexual misconduct cases and would encourage them to report incidents where they occur.

149. In general, however, most – but not all – providers and individual employees considered that a provider's single document could end up being complex and inaccessible and that this could make it particularly difficult for students to engage with if they are traumatised after witnessing or experiencing harassment or sexual misconduct. In particular, several providers indicated that the degree of overlap between policies could lead to an extremely lengthy document with considerable duplication. It was also considered that length and duplication could confuse students; many attendees at our student roundtables agreed that this was a credible concern. Others suggested that the proposal for a single document was too prescriptive and burdensome, and that it could not be tailored for individual audiences.
150. We asked whether respondents had any proposed alternatives to the single document (question 4b). A number did not respond, but 78 per cent of respondents who did proposed that the single document should act as a signpost to existing policies and procedures hosted on a provider's website.
151. In addition, a number of respondents suggested that additional requirements should be introduced for the single document. Suggestions included:
- a. That providers should consider accessibility of their single document, particularly for students with reading or language difficulties. This might include publishing the document in a variety of formats or ensuring its accessibility for screen readers.
 - b. Requiring a provider to consult its students when developing its single document.
 - c. Allowing the 'single document' to be produced in other mediums, e.g. infographics and videos.
 - d. That the content and presentation of the document should be 'trauma-informed', in other words, should take account of the fact that those it is designed to help may have been subject to harassment or sexual misconduct.

Our response

152. Our policy intent in proposing that a provider should have a single document was to enable current and potential future students to locate the necessary information easily. The consultation responses have been clear that while respondents consider that there is a need for information to be transparent and readily available, requiring all of this to be included in a single document (particularly for larger providers) may not be the most appropriate way forward. This is because it may be difficult to tailor a single document for a variety of audiences, and it could become excessively long and potentially inaccessible to some students. For some providers, it may still be preferable to create a single document. We had intended that providers would be able to publish separate supporting documents tailored for

different audiences if they considered this to be necessary, and this was reflected in the content requirements we proposed (as discussed below).

153. There were some suggestions that the single document would be used mostly to support the OfS's regulation. As we set out in paragraph 45 of Annex A of the consultation document (page 67 of the full document), 'the OfS will use its general risk-based approach to monitoring as set out in the regulatory framework'. Our risk-based approach to monitoring includes reviewing notifications from students. We consider that the OfS being able to easily identify a provider's policies and procedures in respect of harassment and sexual misconduct is in the direct interests of students and providers insofar as it should support efficient regulation. The primary reason for proposing the single document, however, was to support students in understanding a provider's policies in relation to harassment and sexual misconduct.

Decision

154. Responses confirm that providers' policies and procedures should be transparent. However, the consultation feedback suggests that it is appropriate to give providers more flexibility over how they publish this information. Some providers and students' unions supported the proposal for a single document and we expect that, in some cases, this may be the most appropriate option, for example those with small student populations. However, it is clear that there are alternative ways of achieving our policy intent for some providers. For this reason, we have replaced our proposed requirement for a single document with a requirement for a provider to have a single comprehensive source of information, which is set out in the new condition as follows.

E6.2 The provider must maintain a single **comprehensive source of information** which sets out the provider's overall approach, policies and procedures on subject matter relating to **incidents of harassment and sexual misconduct**, including **intimate personal relationships** between **relevant staff members** and **students**.

E6.3 That single **comprehensive source of information** (and any revisions made to it from time to time) must:

- a. comply at all times with the **minimum content requirements** and the **content principles**;
- b. be published and accessible at all times in a manner which complies with the **prominence principles**; and
- c. allow for users to clearly understand the version of a policy that existed at previous times by making historical versions of policies available for an appropriate period, and being transparent about changes made to their content. This should be done in a manner that is in line with the **prominence principles**.

We have then defined single 'comprehensive source of information' and 'prominence principles' as follows:

E6.11

g. **'comprehensive source of information'** means

- i. A single document or webpage that comprehensively sets out all the information required in order to comply with E6.2 and E6.3; or
- ii. A single document or webpage that gives a clear summary of the information required by E6.2, complies with E6.3 and links to additional documents that comprehensively set out the remaining relevant detail as required by E6.2 and E6.3. If the provider adopts this approach, the single document or webpage must include a summary of the content to be found by following these links.

o. **'prominence principles'** means the following requirements in respect of the single **comprehensive source of information** required by paragraph E6.2:

- i. the single **comprehensive source of information** is published in a prominent position in an area of the provider's website which is easily accessible by **students** and those considering applying to be **students** without the need for any form of password or security check;
- ii. a clear and easy to understand statement about the existence of the single **comprehensive source of information**, the nature of its content, and how to access it is:
 - A. communicated directly to all **students** and **staff** in writing at least once each calendar year; and
 - B. set out in the main documents designed to promote the higher education services available from the provider (for example, any document that is commonly known as a prospectus);
 - C. set out in any documents that are designed to provide a collection of useful information about rules, policies and procedures for **students** and **staff** (for example, any documents that are commonly known as student handbooks and staff handbooks).

155. This requirement means that a provider may determine for itself which of the two options for a comprehensive source of information is the best way to present its policies and procedures relating to harassment and sexual misconduct, provided that the method chosen by the provider complies with:

- the minimum content requirements
- the content principles
- the other requirements of condition E6, such as the freedom of speech principles.

156. The document or webpage, and all linked material, must collectively comply with the minimum content requirements (discussed below). This means that there is no requirement for a single document to cover all the minimum content requirements on its own but, if a provider chooses

to use a webpage as its single comprehensive source of information, it must ensure that all of the minimum content requirements are met by documents clearly signposted and easily accessible on that webpage or document. If a provider chooses to create a smaller document with links, that document and those links combined must cover the entirety of the minimum content requirements.

157. This means that a provider must also review any existing policies that it intends to link to, to ensure that they are compliant with the minimum content requirements (as discussed below). If a provider wishes to do so, it may also publish this information in other forms such as videos, which may also go further in explaining its approach, as long as they also comply with the minimum content requirements and content principles.
158. The content principles have increased importance now that we are supporting greater flexibility in how information is presented for students. For this reason, we have addressed consultation responses relating to the content principles below, before discussing the minimum content requirements.
159. In considering the impact of amending the requirement to have a single document, we have also decided to add a requirement at E6.3 to ensure that some of the benefits of a single document would apply regardless of the format chosen by a provider. This requirement means that a provider:
 - a. must be transparent about changes it makes to its single comprehensive source of information
 - b. must ensure that previous versions of the single comprehensive source of information are easily accessible by students and other users, in line with the prominence principles.
160. We have also added some guidance related to these points, which can be found at paragraph 18 of the condition guidance in Annex A.
161. This requirement will ensure that the single comprehensive source of information is transparent and that students and other users can access older versions of the information, for instance to confirm exactly which policies were in place at the time of an incident they are considering reporting.
162. In moving away from a requirement to have a single document, we consider that there is a risk that relevant information will not be immediately apparent to students, because some of that information may be linked from other documents. There is also a risk that an applicant or incoming student would not be able to understand a provider's overall approach if information is not presented in a single document. Ultimately, however, we consider that the changes we have made to this requirement do not significantly affect our core policy aim that information is clearly and publicly available, easy for current and prospective students to understand and available for the OfS to review.
163. These changes will also reduce regulatory burden and the resources needed to produce a single document, enabling providers to focus their efforts on measures to reduce harassment and sexual misconduct. We also consider that changing our approach is likely to support providers in improving clarity for particular groups of students: for example, students who may

be subject to different harassment and sexual misconduct policies while on work-based learning placements.

164. Some respondents suggested including additional requirements as part of the proposed requirement for a single document – for example, a requirement to consult with students, or specific requirements relating to accessibility. We consider that many of these matters fall within the minimum content requirements, and so have addressed them in the relevant section below.

Proposal to have content principles (questions 7a and 7b)

7a. Do you agree or disagree with the proposal for content principles for the single document we propose a provider should maintain? Please give reasons for your answer.

7b. Do you have alternative suggestions to the proposal in question 7a? If so, please explain and provide the reasons for your view.

165. The content principles we consulted on were:

f. **'content principles'** means the following requirements:

- i. the provider may include other information and provisions in the same document that contains the minimum content requirements, but such other information and provisions must:
- not contradict, undermine or conflict with the **minimum content requirements**; and
 - be subject to a provision which makes it expressly clear that the **minimum content requirements** take precedence over any other information and provisions;
- ii. the provider must not include information and provisions on subject matter relating to **harassment** and/or **sexual misconduct** (and/or any subject matter of a similar nature to matters covered by those defined terms) in any other documents which could reasonably be considered to contradict, undermine or conflict with the **minimum content requirements**.

Summary of respondents' views

166. 64 per cent of respondents who answered questions relating to the content principles supported their inclusion, while a quarter of respondents to question 7a disagreed with the proposal to have content principles.
167. Those who supported the inclusion of content principles considered that it would help to ensure consistency across providers and increase clarity within a provider's policies and procedures and would allow students to hold a provider to account for its commitments. A small number of respondents said that they did not agree with the proposal to require a single document, but that if this was introduced, the 'content principles' would be important.

168. Those respondents who disagreed – mostly higher education providers – considered the content principles to be too prescriptive and specific, suggesting that they could result in confusion and misinterpretation. It was also suggested that requiring a provider to abide by the content principles could lengthen its single document. A small number of respondents considered that requiring a provider to abide by the content principles would constitute a challenge to the provider’s autonomy. Others asked for additional guidance about the type of things that might constitute a conflict with the minimum content requirements.
169. Some respondents commented on matters not directly related to the content principles in response to question 7b. These comments are addressed in the section on the relevant minimum content requirements below.

Our response

170. Our experience from monitoring providers’ compliance with the ongoing conditions of registration is that there can sometimes be inconsistencies between a provider’s own policies. Providers should ensure when developing their single comprehensive source of information that policies do not contradict one another and, where there are differences in provision for students (for example, those who may be subject to additional professional, statutory and regulatory body requirements), that these are made sufficiently clear.
171. We have considered whether the content principles are too prescriptive. The content principles require the following:
- a. That any information contained within either a provider’s single comprehensive source of information, or any other documents, must not contradict, undermine or conflict with the minimum content requirements imposed by condition E6.
 - b. That if any other information is included within a provider’s single comprehensive source of information, it must be made clear that the minimum content requirements take precedence over any other information and provisions.
172. Our view is that setting a requirement that a provider’s policies should not contradict, undermine or conflict with one another should not impose additional burden on a provider or require the single comprehensive source of information to be longer than it might otherwise be. Our policy intent in proposing this requirement was to ensure that students are not confused by inconsistencies or contradictions in a provider’s policies because it is extremely important that they have accurate and up-to-date information if they experience harassment or sexual misconduct.
173. We have, however, considered whether the requirements in the content principles could be expressed more clearly. We have adjusted the wording of E6.11.h.i to read ‘the provider may include other additional information and provisions in the single comprehensive source of information in addition to the minimum content requirements, but such other information and provisions must...’ This updated wording means that a provider can include extra information in its single comprehensive source of information. Any extra information must, however, meet the requirements of the content principles so as not to undermine what the provider has said to meet the minimum content requirements.

174. We have also considered requests for additional guidance about what might constitute undermining, contradictions or conflicts between policies. Below is an illustrative non-exhaustive list of matters to which providers may wish to pay particular attention when reviewing policies for potential conflicts:

- a. Legal safeguarding obligations that apply to under-18s and 'adults at risk' receiving higher education.
- b. Students studying on a regulated or accredited course may be subject to additional safeguarding or fitness-to-practice requirements.
- c. Postgraduate students may have obligations to a research or funding body, or organisations which may have differing policies and procedures as a condition of funding, support, or access to resources.

175. We have also added these points to the guidance accompanying condition E6.

Decision

176. On the basis of the rationale set out above, we have decided to retain in full the requirement that a provider must comply at all times with the content principles.

177. We have adjusted the wording of the condition in relation to the content principles to ensure that providers understand the requirements. The requirement now reads as follows:

E6.11

h. **'content principles'** means the following requirements:

i. the provider may include other additional information and provisions in the single **comprehensive source of information** in addition to the **minimum content requirements**, but such other information and provisions must:

A. not contradict, undermine or conflict with the **minimum content requirements**; and

B. be subject to a provision which makes it expressly clear that the **minimum content requirements** take precedence over any other information and provisions;

ii. the provider must not include information and provisions on subject matter relating to **harassment** and/or **sexual misconduct** (and/or any subject matter of a similar nature to matters covered by those defined terms) in any other documents which could reasonably be considered to contradict, undermine or conflict with the **minimum content requirements**.

178. We have added further wording to the guidance to support providers in identifying what might constitute undermining, contradictions or conflicts between policies.

Proposals relating to the minimum content requirements (questions 5a, 5b, 6a and 6b)

5a. Do you agree or disagree with the proposal that minimum content requirements should be specified for the single document we propose a provider should maintain? Please give reasons for your answer.

5b. Do you have alternative suggestions to the proposal in question 5a? If so, please explain and provide the reasons for your view.

6a. Do you agree or disagree with the minimum content requirements proposed for the single document we propose a provider should maintain? Please give reasons for your answer.

6b. Do you have alternative suggestions to the proposal in question 6a? If so, please explain and provide the reasons for your view.

179. We proposed in our consultation that there should be 'minimum content requirements' for a provider's single document. Under the minimum content requirements, we proposed that each provider should explain:

- a. The steps it is taking to protect students from harassment or sexual misconduct, including steps that may reduce the likelihood of harassment or sexual misconduct taking place.
- b. Its arrangements for reporting and investigating incidents of harassment or sexual misconduct, including how it will handle students' data and how students are informed about the decisions made following investigations into harassment and sexual misconduct.
- c. How students and staff will receive appropriate teaching or training on subject matter relating to incidents of harassment or sexual misconduct.
- d. How all students, including potential victim-survivors and alleged perpetrators, will be supported.

180. These minimum content requirements describe the minimum standard for the content of a provider's policies and procedures and are used to describe what every student can expect their provider to provide.

Summary of respondents' overall views on the minimum content requirements

181. 210 people responded to this question. Over 69 per cent agreed to some extent that there should be minimum content requirements, while 24 per cent disagreed to some extent. No students or student representative groups disagreed with the proposal to have minimum content requirements, whereas just over one-third of providers disagreed.

182. Not everyone explained their reasons for agreeing or disagreeing with the proposal. However, respondents who agreed with the proposal largely did so because they agreed with our policy intent: to provide clarity to students about a provider's policies and processes, and support

the development of consistent standards and experiences for all students. Others suggested that it was equally helpful for providers to understand what is expected of them, and a small number of students or student representative groups considered that the minimum content requirements would support individuals in holding providers to account for the expected standards.

183. Respondents who disagreed with all or some aspects of the proposed minimum content requirements tended to do so for one of three main reasons:

- a. They had concerns about specific elements of the minimum content requirements, or did not fully understand how they might comply with a particular requirement. Not all respondents commented on all of the minimum content requirements. Many responses related to the proposed requirement that a provider should ensure that students are appropriately taught.
- b. They broadly agreed with the proposed minimum content requirements, but did not consider that it would be possible to implement them in the proposed timeframe. We have carefully considered this feedback, and the timeframes for implementation are set out in the section of this document on Proposal G.
- c. They disagreed in principle with either the condition in its entirety, or the proposal to have minimum content requirements, and preferred an alternative option in which minimum content requirements were not prescribed. These respondents expressed particular concerns that the proposals were too prescriptive and so infringed on institutional autonomy or could not be adapted to a provider's particular context. A number of respondents also suggested that there would be likely to be regulatory and resource burden if the condition was adopted as proposed. We have carefully considered these responses and address them in the following sections.

184. A small number of respondents disagreed in principle with having minimum content requirements, but indicated that the proposed approach would be appropriate if the OfS decided to proceed with minimum content requirements.

Our response

185. We respond to comments about the individual minimum content requirements below.

186. We have considered points about the resource implications and regulatory burden of introducing minimum content requirements. This is something we have considered in relation to each individual minimum content requirement. Overall, we recognise that introducing a new condition of registration, including minimum requirements for compliance with it, will require resources from providers and add an element of regulatory burden. However, we consider that this is appropriate to achieve our policy intent that students are consistently and better protected from harassment and sexual misconduct.

Decision

187. We have decided to introduce minimum content requirements in relation to a provider's single comprehensive source of information. We discuss these requirements in turn below.

Proposal to require a provider to take multiple steps which could make a significant and credible difference

188. We consulted on the following:

- j. **'minimum content requirements'** means comprehensive and easy to understand provisions in respect of:
 - i. in addition to any other steps required by virtue of the condition, multiple steps which could (individually or in combination) make a significant and credible difference in protecting students from behaviour that may amount to **harassment** and/or **sexual misconduct**, including, but not limited to, steps that may reduce the likelihood of **harassment** and/or **sexual misconduct** taking place;

Summary of respondents' views

189. A relatively small number of respondents commented on the proposal to require a provider to set out multiple steps which could make a significant and credible difference in protecting students from harassment and sexual misconduct. Some of those who did comment welcomed this requirement. Others requested additional detail about what 'a significant and credible difference' might look like, and how the OfS would monitor a provider's compliance with this aspect of the condition. One individual suggested that this should be 'clarified and quantified' with specific targets set. Others expressed concern that if they were already taking what they considered to be multiple steps to make a significant and credible difference, they would need to go beyond those steps.
190. One respondent stated that a provider could not know immediately if the steps it was taking could make a significant and credible difference in protecting students from behaviour that might amount to harassment or sexual misconduct. This was because, in the respondent's view, reaching a judgement on the significance and credibility of particular steps was an iterative process which required ongoing evaluation and dialogue with students. It was suggested that the particular phrasing of this aspect of this minimum content requirement meant that a provider could not be compliant with the condition at the point it came into force.

Our response

191. If a provider is already taking multiple steps that it has judged could make a significant and credible difference in protecting its students from behaviour that may amount to harassment or sexual misconduct, and that some of these steps may reduce the likelihood of harassment or sexual misconduct taking place, then the condition would not necessarily require that provider to introduce additional steps. A provider will need to judge whether its current actions are likely to meet our requirements. We know many providers already have measures in place to protect students from behaviour that may amount to harassment or sexual misconduct. Our intention with this requirement is twofold:
- a. First, to require those providers that are not already taking steps to protect students from harassment and sexual misconduct to do so.

- b. Second, to place emphasis on the importance of a provider understanding its own students and evaluating the likely effectiveness of any steps that it might introduce and/or basing its interventions on practice which has already been evaluated as effective in similar settings.

192. Our guidance on this requirement can also be found at paragraphs 20-25 in Annex A. We expect a provider to identify and put in place steps that it considers will have a clear and positive impact in protecting students from harassment and sexual misconduct. These steps should include steps that are likely to reduce the likelihood of harassment and sexual misconduct occurring.
193. The steps should also extend beyond the minimum content requirements as the requirement to take multiple steps is in addition to the other minimum content requirements. This means a provider could not demonstrate compliance by simply stating that it is introducing, for example, reporting and investigation processes. If a provider introduces steps which go beyond our requirements, and these have a clear positive impact, this would be a credible step to improvement, as long as those steps do not conflict with any other obligations, for example in relation to an individual's right to freedom of speech.
194. We expect a provider to use evidence when identifying and implementing steps that it considers will have the required effect. While a provider may not immediately know for certain that a particular step will make a significant and credible difference, it should have good reason to expect that it will. Evaluation, as suggested in our guidance, will help a provider to understand and improve the impact of the steps it implements.
195. The nature of this requirement means that a provider will need to consider its own context as it takes steps to comply with the new condition. We therefore consider that it is not appropriate to prescribe any further steps beyond the guidance already included.
196. We will adopt our general risk-based approach to monitoring, as set out in the regulatory framework.²⁸ Where intelligence suggests potential concerns about compliance, we may engage with a provider to ensure it is aware of the issue, may gather further information or may open an investigation. If our concerns are substantiated we may take regulatory action such as imposing a specific ongoing condition of registration, or other enforcement action as appropriate.
197. Providers may also work together to deliver the requirements of this condition where this is in the best interests of students. For example, providers that already have shared services agreements, or are in the same geographical location, may wish to identify collective steps to tackle harassment and sexual misconduct or work with local authorities and other organisations to do so.
198. A provider is likely to find it helpful to involve students in the development of its interventions. We recognise that a provider will be likely to need to change the steps it is taking over time, for example, in response to changes in student demographics, or the prevalence or types of incidents. This is why we included in the consultation document the illustrative steps in the guidance. We explain more about our approach to monitoring this condition in the guidance,

²⁸ See www.officeforstudents.org.uk/publications/regulatory-framework-for-higher-education-in-england/.

but we are clear that in order for a provider to identify steps that may make a significant and credible difference, it may be necessary for it to try different approaches. Our intent is to require providers to treat these issues with the seriousness they deserve.

Decision

199. On the basis of the rationale set out above, we have decided to retain in full the requirement that a provider must take multiple steps which could (individually or in combination) make a significant and credible difference in protecting students from behaviour that may amount to harassment and/or sexual misconduct, including, but not limited to, steps that may reduce the likelihood of harassment and/or sexual misconduct taking place.

Proposals relating to reporting, investigations, information handling and sharing of outcomes

200. The proposed minimum content requirements relating to reporting, investigations, information handling and sharing of outcomes were as follows:

- j. **'minimum content requirements'** means comprehensive and easy to understand provisions in respect of:
 - ii. the ways in which **students, staff** and other persons are able to report behaviour that may amount to **harassment** and/or **sexual misconduct** to the provider;
 - iii. how information received or obtained in connection with **incidents of harassment** and/or **sexual misconduct** will be handled sensitively and used fairly;
 - vii. how the provider ensures that investigations undertaken and decisions made in respect of **incidents of harassment** and/or **sexual misconduct** are credible, fair and otherwise reflect established principles of natural justice;
 - viii. how the provider ensures that persons directly affected by any decisions made in respect of **incidents of harassment** and/or **sexual misconduct** (including, but not limited to, actual or potential victims and actual or alleged perpetrators) are directly informed about the decisions and the reasons for them.

201. 'Incidents' is defined as follows:

- i. **'incidents'** includes, but is not limited to, circumstances where:
 - i. allegations or complaints are made to the provider about **harassment** and/or **sexual misconduct**; and
 - ii. a provider could reasonably be considered to have grounds for suspecting that **harassment** and/or **sexual misconduct** has taken place or is taking place.

Summary of respondents' views

202. We have combined our summary of the range of proposals relating to reporting and investigations, as there are overlaps between these areas. In general, respondents either did not comment on these or considered that these were appropriate requirements. There was one exception: 71 per cent of respondents who offered alternative suggestions on the minimum content requirements suggested there would be potential risks in sharing the outcomes of disciplinary procedures. Our consultation document said:

‘Some students suggested that the outcome of a complaint is sometimes not clearly communicated to those who have made complaints. Our proposal would mean that a provider’s single document would need to be sufficiently comprehensive to explain the processes involved while being easy to understand, and for those processes to be effective in practice. For the avoidance of doubt, our view is that all individuals involved in an incident of potential harassment or sexual misconduct should be made aware of the outcome of any investigation and decision-making process.’

203. Our proposal was consistent with the approach taken by the Office of the Independent Adjudicator for Higher Education (OIA), which considers sharing outcomes of investigations to be good practice. However, respondents who raised concerns about this suggested that we should follow Universities UK’s (UUK) guidance, which states that providers should decide whether it is appropriate to disclose outcomes. Several respondents suggested that data protection legislation might mean that, in some cases, a provider could not legally disclose some information.

204. On the other hand, a small number of respondents argued that it was appropriate that outcomes were provided to the parties involved, because not doing so would reduce confidence in a provider’s ability to conclude complaints processes and would add further distress to those involved.

205. Also relevant to this proposal is feedback from respondents about the standard of proof providers would be expected to use when investigating allegations. As explained earlier, references to legislation in our definition of harassment do not create a requirement for a provider to use a criminal standard of proof in its own internal investigations. To ensure that this is clear, we have added further wording into the guidance for the condition (as set out below).

206. Some respondents suggested that we should require a provider to set ambitious targets for timescales for concluding investigations. However, others considered that there was a reasonable risk that providers might not always be able to comply with strict timescale targets, particularly if there was an ongoing criminal investigation.

Our response

207. Our policy view remains that students who have alleged and/or experienced harassment or sexual misconduct should be able to know the outcome of any investigation and decision-making process. However, the wording of the relevant minimum content requirement is as follows:

viii. how the provider ensures that persons directly affected by any decisions made in respect of **incidents of harassment** and/or **sexual misconduct** are directly informed about the decisions and the reasons for them. This includes, but is not limited to, persons who have alleged and/or experienced **incidents of harassment** and/or **sexual misconduct** and actual or alleged perpetrators.

208. This means that, in order to comply with this minimum content requirement, a provider's policies and procedures would need to explain how it directly informs students who have alleged and/or experienced harassment or sexual misconduct and alleged perpetrators about decisions it has taken. We recognise that there may be some circumstances where a provider considers that specific factors mean that there are limitations to how much of the detail of the outcome it can share, but if it considers this may be the case it should be transparent about this in its policies. There may also be times when an investigation extends beyond a student's time studying at that provider. However, if a student wishes to know the outcome of a disciplinary process, it is reasonable for them to expect some form of communication at the conclusion of a report or investigation. This reflects guidance issued by the OIA and UUK.
209. A number of respondents suggested that our proposals relating to non-disclosure agreements would mean that confidentiality could not be maintained throughout the course of an investigation. The minimum content requirements as drafted in the consultation required that 'investigations undertaken and decisions made [...] are credible, fair and otherwise reflect established principles of natural justice'. In order for investigations to be fair, investigators need to ensure that they are not biased or influenced in their decision-making. It may therefore be necessary to maintain a degree of confidentiality throughout an investigation, and our approach is not intended to inhibit a provider's ability to run a fair investigation. However, it should be made clear to all students that they may continue to seek support by speaking to friends, family, healthcare providers, or by reporting any incidents to the police if they wish to do so.
210. Our position in respect of 'gagging orders' and non-disclosure agreements at the conclusion of an investigation is set out in this document under the section on Proposal E (non-disclosure agreements).

Decision

211. On the basis of the rationale set out above, we have decided to retain in full the requirement for a provider to set out in its single comprehensive source of information how it ensures that investigations and decisions in respect of incidents of harassment and/or sexual misconduct are credible, fair and otherwise reflect established principles of natural justice.

Proposals relating to student support

212. We consulted on the following:

j. '**minimum content requirements**' means comprehensive and easy to understand provisions in respect of:

- v. the appropriate support that will be provided to **students** (including, but not limited to, actual or potential victims and actual or alleged perpetrators) in response to incidents of **harassment** and/or **sexual misconduct**;

213. 'Appropriate support' was subsequently defined as follows:

b. '**appropriate support**' means the effective deployment of assistance, including but not limited to:

- i. support targeted at the needs of **students** involved in any way in an **incident of harassment** and/or **sexual misconduct**, including but not limited to during an investigatory and decision-making process;
- ii. personal support, including in the form of counselling where appropriate;
- iii. academic support, including in relation to decisions about attendance, continuation, suspension or cessation of study.

Summary of respondents' views

214. Those respondents who commented specifically on our proposed requirements relating to student support were in favour of our proposals; some respondents specifically welcomed the reference to personal support. Those who expanded on why they support this element of the requirement particularly welcomed the requirement that support should be offered to students regardless of whether a report is made; that academic support should also be provided; and support should be available for witnesses and actual or potential victims and actual or alleged perpetrators of harassment or sexual misconduct. However, student support was also mentioned as an example by respondents expressing particular concerns about the regulatory and financial burden that could arise from this condition. In addition, a few individuals suggested that it could be particularly challenging to deliver appropriate support in particular circumstances, such as for students studying outside the UK.

Our response

215. We recognise that some of these new requirements will have a resource implication for providers. In particular, where a provider does not currently provide support for students or investigate incidents of harassment and sexual misconduct, additional resources will be needed to meet these new requirements. However, in our experience, the majority of providers already provide pastoral support to students, so are likely to have established arrangements that could be built on if necessary. We consider that offering support to students in relation to harassment and sexual misconduct is important in ensuring that the impact of harassment and sexual misconduct on a student's higher education experience is minimised, and so we consider some additional resource burden in this area to be appropriate and in the best interests of students.

216. A provider is therefore required to ensure that 'appropriate support' is provided in practice. A provider may determine the approach it takes to making such support available to students, for example, by delivering its own support services, commissioning support from other organisations, or making appropriate and effective referrals to other service providers.

Support services will look different depending on the support needs of a provider's student population, demographics and modes of study. For example, a provider whose delivery is online-only may not need in-person/on campus support services, whereas a further education college may need support services to support both further education and higher education students simultaneously. A provider's rationale for the approach it takes should be clear and evidence-based.

217. In relation to students studying outside the UK, a provider has flexibility in how it provides appropriate support. For example, this could be provided by an in-country partner organisation, or delivered online. All students, wherever they study, should be able to access support, training and advice in line with the minimum content requirements and the condition of registration more broadly.

218. A small number of respondents suggested that we should specify that support should be provided separately for students reporting an incident and students responding to allegations, with each student supported by a different member of staff. We consider that this may be desirable, but may not be possible in all instances, such as where staff numbers are small, and we are mindful that respondents also raised the challenges of prescriptive requirements of this sort for smaller providers in particular. As a result, we are not including this requirement in the minimum content requirements.

Decision

219. On the basis of the rationale set out above, we have decided to retain in full the requirement that a provider must set out in its single comprehensive source of information its arrangements for appropriate support to students in response to incidents of harassment and sexual misconduct. This includes, but is not limited to, students who have alleged and/or experienced harassment or sexual misconduct and actual or alleged perpetrators.

Proposals relating to staff training

220. We consulted on the following:

j. **'minimum content requirements'** means comprehensive and easy to understand provisions in respect of:

vi. how the provider ensures that staff and other persons responsible for receiving information about, investigating, or taking decisions on, matters relating to incidents of harassment and/or sexual misconduct are appropriately trained;

221. 'Appropriately trained' is defined as follows:

d. **'appropriately trained'** means **staff** have and maintain:

i. up-to-date understanding of the content of the document required by paragraph E6.2 and all the requirements of this condition;

- ii. up-to-date understanding of behaviour that may constitute **harassment** and/or **sexual misconduct**;
- iii. the required knowledge and skills to support **students** who:
 - wish to make allegations or complaints about **harassment** and/or **sexual misconduct**;
 - are the actual or potential victims of **incidents** of **harassment** and/or **sexual misconduct**; and
 - are the actual or alleged perpetrators of **incidents** of **harassment** and/or **sexual misconduct**; and
- iv. the required knowledge and skills to undertake investigations or make decisions in relation to **incidents** of **harassment** and/or **sexual misconduct**

Summary of respondents' views

222. Of the 210 responses received for question 6a (minimum content requirements), 29 per cent of responses made specific mention to staff training.
223. Of those who mentioned staff training in their response, almost two-thirds indicated that they were in agreement with the relevant requirement. A small number of respondents said that their provider already offered staff training in relation to harassment and sexual misconduct, to a greater or lesser degree. A small number disagreed with the requirement to include staff training in the minimum content requirements. The rest of the respondents did not say whether they agreed or disagreed with staff training specifically, but provided other comments about the requirements as they were proposed.
224. A number of respondents made points about some elements of the requirement for staff training. The most common issue related to the resources respondents thought would be required to implement this element of the condition. Some requested further funding from the OfS to implement staff training. A similar number of respondents considered that the proposed three-month implementation period for the condition of registration would make it difficult for providers to develop and deliver training to staff. Implementation timescales are discussed in a later section on Proposal G.
225. A small number of respondents made points about the availability of training providers to deliver training to staff, and/or the increased burden on providers (particularly smaller providers) to resource this training. Similar numbers of respondents identified a need for flexibility to ensure that staff training is appropriate for the context of an individual provider. This included the content of any training, the manner in which it is provided to staff and the level of training required for different types of staff.
226. Other responses asked for more information about what is meant by the term 'appropriately trained', and for clarification about what is meant by the need for training to be 'underpinned by credible evidence and delivered by persons with credible and demonstrable expertise'. A small number of respondents requested additional guidance on how often training should be renewed. Additionally, a small number of respondents said that staff could also be survivors

of harassment and sexual misconduct, and so some training may be difficult for these individuals.

Our response

227. We consider that for a provider's interventions to be effective, its staff must be appropriately trained to offer support to students, signpost them to services and be empowered to address harassment and sexual misconduct where they encounter it. Staff should receive training appropriate for their role and the provider's context. Ensuring this information is set out in the provider's single comprehensive source of information provides reassurance to students that staff members are appropriately trained to support them.
228. The main issue raised by respondents related to resources, during the implementation period in particular. We have addressed the points made about the implementation period in the section on Proposal G. As explained in the section on capacity and resources, we recognise that the new condition is likely to create an additional resource burden for providers where activity of this type is not already taking place or is taking place to a significantly lesser extent. However, we have sought to minimise this burden through changes to the implementation timeline both in general and for training in particular.
229. A provider can decide how it delivers training to its staff in its particular context. For example, online training may be an acceptable solution, provided that it is 'underpinned by credible evidence, and its effectiveness evaluated' and 'designed and delivered by persons with credible and demonstrable expertise' as set out in the guidance underpinning the condition. This means that training should be based on evidence and evaluated to ensure it is effective. It should be developed and delivered by people with appropriate expertise – this may include a provider's own staff and/or external contractors.
230. We expect all staff to receive training about a provider's approach to tackling harassment and sexual misconduct, but a provider should apply its own judgement in identifying which members of staff would benefit from further training on disclosures, investigations and support. Where training may be upsetting for staff members who have experienced harassment or sexual misconduct, we would expect a provider to manage this on a case-by-case basis to ensure staff are effectively supported while still receiving the training they need for their role.
231. We agree that the training offered to staff needs to be tailored to a provider's particular context and staff profile. This means that staff with a particular role in tackling harassment and sexual misconduct are likely to need more training than others. Not all staff will need specialised training. The condition requires staff to 'have and maintain' training and so a provider should consider how regularly staff training should be renewed to ensure that an appropriate level of training is maintained. We expect a provider to evaluate the training it provides to its staff to ensure that it continues to be appropriate.
232. Some respondents asked whether staff working in students' unions or similar organisations were included in these requirements. People employed or contracted by a students' union, or other similar organisation, may benefit from similar training, but providing this is not an obligation of a registered provider under the terms of the new condition, unless those staff are also employed or contracted by the provider.

233. We want to be clear about the importance of the free speech requirements in the context of training. For example, some training (including that delivered by third parties) could include elements that could have a chilling effect on free speech, by expecting participants to agree to particular ideas. We have therefore amended our guidance to reflect this.

Decision

234. On the basis of the rationale set out above, we have decided to retain in full the requirement that a provider must set out in its single comprehensive source of information how it ensures that staff and other people responsible for receiving information about, investigating, or taking decisions on, matters relating to incidents of harassment and/or sexual misconduct are appropriately trained. Providers must meet this requirement by 1 August 2025 which is when the condition takes effect.

235. We have made an addition to paragraph 28.e of the guidance to underline the importance of freedom of speech in the context of staff training:

‘Training (including that delivered by third parties) is consistent with a provider’s free speech obligations.’

Proposal to require that students be ‘appropriately taught’

236. The proposed minimum content requirement in relation to training for students was presented in the consultation document as:

j. **‘minimum content requirements’** means comprehensive and easy to understand provisions in respect of:

iv. how the provider ensures that **students** are **appropriately taught**;

237. The proposed condition text goes on to define ‘appropriately taught’ as follows:

c. **‘appropriately taught’** includes, but is not limited to:

i. ensuring that **students** understand the content of the document required by paragraph E6.2 when they register at the start of each year of study; and

ii. induction sessions for new **students** contain training to ensure they understand behaviour that may constitute **harassment** and/or **sexual misconduct**.

238. In relation to student training, the proposed wording included in the guidance to accompany proposed condition E6 is particularly relevant. The proposed wording was set out in the consultation document at paragraph 19 of the guidance in Annex A, as follows:

‘Condition E6.2 and the minimum content requirements require a provider to set out in a single document how it will ensure that students are ‘appropriately taught’.

239. Proposed condition E6.3 required a provider to operate in accordance with, and comply with, its single document. It required a provider to ensure that students are appropriately taught in

practice. The following is an illustrative non-exhaustive list of examples that was given of how a provider may demonstrate that it has complied with these requirements:

- a. Mandatory training is delivered for all students.
- b. Training for potential witnesses of sexual misconduct (often referred to as 'bystander training'), and training on sexual consent, is delivered.
- c. Training is underpinned by credible evidence, and its effectiveness is evaluated.
- d. Training is designed and delivered by persons with credible and demonstrable expertise.

Summary of respondents' views

240. A great deal of the feedback received on student training related to bystander and consent training and focused on implementation.
241. Of the 204 respondents answering the question on capacity and resources (Proposal C), 11 per cent agreed with the proposed requirements and also raised concerns over the small pool of expertise available in the sector to train and support providers. Some of these respondents reported that it has been difficult in the past to recruit staff for this purpose.
242. Of 176 respondents commenting on the proposed implementation period (Proposal G), nearly two-thirds disagreed with some aspects. 55 per cent of respondents to this question said that the proposed implementation period was too short. The main issue raised related to timescales for introducing training, with 29 per cent citing the time it would take to train staff and/or students in accordance with the proposed requirements.
243. One of the concerns raised about the proposed implementation timeframe was the view that it may result in providers rushing development of training, leading to low quality training. Of 205 comments on the proposed minimum content requirements, the main concern of 43 per cent of respondents was how a provider would ensure that students are appropriately taught. The main reason given (by 11 per cent of respondents who commented) was that the proposed implementation timeframe of no less than three months was too restrictive and would compromise the quality of training.
244. Of the 72 respondents who offered further suggestions on the minimum content requirements, approximately one-third requested further information about the source, content and delivery of training for students and staff. Reasons for requesting further information included the view that training should be backed by research and evidence of 'what works' for students and staff to prevent and respond to incidents of harassment and sexual misconduct, as well as suggestions that providers should educate students on consent.
245. Respondents made points about the proposal that training should be 'mandatory' for all students. They asked about the impact this could have on those who have experienced harassment and sexual misconduct, as well as those with particular protected characteristics. Of the 205 respondents commenting on the proposed minimum content requirements seven per cent raised the implications for students who have experienced harassment and/or sexual misconduct and suggested potential exemptions from training. Seven per cent suggested that

students from religious backgrounds or with particular protected characteristics may not feel comfortable attending training.

246. Mandatory training also featured in responses to question 16 which asked respondents whether the proposals would have an impact for students on the basis of their protected characteristics. Despite not referring directly to any particular characteristics, a small number of these respondents suggested there would be risks relating to mandatory training for students, for example, that it could be upsetting and difficult for someone who has experienced harassment or sexual misconduct to participate in training.
247. Attendees at student roundtables supported mandatory training but also suggested that students who have experienced harassment or sexual misconduct should be able to opt out.
248. Consultation respondents asked for clarification about the definition of 'appropriately taught'. Our policy intent here is to ensure that students are being actively engaged and understand a provider's policies and procedures.
249. Seven per cent of the respondents who commented argued that students should not be 'trained' or 'taught' about harassment and sexual misconduct issues to match terminology used for staff training.
250. A few of the respondents who provided further suggestions on the minimum content requirements suggested that online sessions should be recognised as suitable training, suggesting that in-person sessions would have greater resource demands.
251. A small number of respondents requested confirmation that the term 'appropriately taught' applied only to student training in relation to harassment and sexual misconduct and not in relation to the content of courses at a provider.

Our response

252. Our policy intent is that students understand their provider's policies and processes in relation to harassment and sexual misconduct, including definitions and the full content of a provider's single comprehensive source of information. We also think that students should receive training to raise their awareness and to help prevent harassment and sexual misconduct from taking place.
253. We recognise concerns about the current availability of expertise to deliver student training and agree that it is important that facilitators are appropriately trained and experienced to provide this type of training. Providers that do not have expertise in this area may wish to work with other providers to develop and/or deliver training, to train internal facilitators or provide training directly to students. Alternatively, providers may wish to consider externally facilitated training where appropriate.
254. Over the years the OfS has funded several projects through its Catalyst Fund in relation to the prevention of, and support for students facing, harassment and sexual misconduct. This includes training materials for facilitators and students. Details of the initiatives involved and

published resources can be found on the OfS website.²⁹ Providers are free to use these resources but should ensure that they will assist with compliance with the new condition.

255. We understand that feedback about implementation timelines, the availability of training, quality of training and the capacity and resources to deliver training to students are all interlinked. We have provided further information about changes to the proposed implementation timelines in the section of this report on Proposal G. The changes we have made aim to address some concerns about the time needed to develop and introduce training to large numbers of students.

256. We understand the points raised about requiring mandatory training for all students. We consider that student training should be mandatory, but recognise that a provider will need to use its judgement to identify individual students who should not be required to participate, for example, where a student is a survivor of a previous harassment or sexual misconduct incident and the particular training would cause significant distress or further harm. We would also expect a provider to support participation in training. For example, if a provider finds that a significant proportion of its students are asking to be exempted from a particular training session, the provider may wish to consider whether it would be appropriate to provide additional support or to adjust that training to support increased participation. We have added guidance related to this at paragraph 27 of the condition guidance found in Annex A.

257. In relation to online training, we set out in the consultation that given the complexity of harassment and sexual misconduct:

‘we would expect there to be an appropriate amount of time dedicated to mandatory training as well as an opportunity for attendees to ask questions. For example, a short online session at the beginning of a student’s higher education career that does not allow for questions and discussion, is unlikely to be sufficient to meet our proposed requirements’ (page 24-25).

258. We are not changing that expectation but can clarify that some online training may be acceptable, provided it gives sufficient opportunity for appropriate student engagement and is evidence-based.

259. We want to be clear about the importance of the free speech requirements in the context of training. For example, some training (including that delivered by third parties) could include elements that could have a chilling effect on free speech, by misrepresenting relevant legal requirements or by expecting participants to agree to particular ideas. We have therefore amended our guidance to reflect this at paragraph 26.e.

‘Training (including that delivered by third parties) is consistent with a provider’s free speech obligations.’

Decision

260. We have considered the points made about implementation timelines, the availability of expertise to deliver training, the quality of training and the capacity and resources needed to deliver training to students. This consideration has contributed to our decision to implement

²⁹ Resources for higher education providers, OfS. Available at: www.officeforstudents.org.uk/advice-and-guidance/student-wellbeing-and-protection/prevent-and-address-harassment-and-sexual-misconduct/.

these requirements from 1 August 2025. This is explained more fully in the 'Implementation' section of this document.

261. We have made an addition to paragraph 25 of the guidance to underline the importance of freedom of speech in the context of student training:

- e. 'Training (including that delivered by third parties) is consistent with a provider's free speech obligations.'

262. In response to comments about the use of the phrase 'appropriately taught' to describe our expectations about training for students, we have changed this to 'appropriately informed to ensure understanding.' This is intended to remove any uncertainty about whether the requirements in condition E6 relate to the content of a provider's higher education courses – they do not. The updated wording in condition E6 is as follows:

E6.11

n. '**minimum content requirements**' means comprehensive and easy to understand provisions in respect of:

- iv. how the provider ensures that **students** are **appropriately informed to ensure understanding**;

263. This new wording will have the same meaning as that proposed for 'appropriately taught' in the consultation. This is as follows:

E6.11

c. '**appropriately informed to ensure understanding**' includes, but is not limited to ensuring that:

- i. **students** understand the content of the single **comprehensive source of information** required by paragraph E6.2 when they register at the start of each year of study; and
- ii. induction sessions for new **students** contain training to ensure they understand behaviour that may constitute **harassment** and/or **sexual misconduct**.

Requests for additional guidance regarding minimum content requirements

Our response

264. A significant minority of providers that responded to the consultation requested additional guidance about how to comply with the proposed minimum content requirements for condition E6. We have carefully considered these requests alongside the comments made about particular proposals, while also considering responses that considered our proposals to

already be too prescriptive. Our changes for each of the minimum content requirements in response to the consultation responses is set out above.

265. The sector we regulate is diverse, with over 420 higher education providers, each with its own particular context. We have carefully considered the range of different obligations placed on higher education providers, for example, in respect of the countries in which they operate, the range of students that they teach (such as students under 18), apprenticeship students studying in the workplace, and the particular types of courses (for example online-only courses). Other obligations and guidance produced by regulators, statutory bodies and organisations will apply to some providers but not others. Beyond this, as many respondents noted, there will be cases where criminal investigations will apply, perhaps also in other countries.
266. We recognise the value in providing guidance to accompany condition E6, particularly as this supports our aim that students experience greater consistency in the protection and support they can expect from their providers relating to harassment and sexual misconduct. This is why our guidance focuses on explaining the requirements of condition E6 and presenting examples to help providers understand how the condition is designed to work and to demonstrate compliance with the condition. We have also made some amendments to the guidance we proposed in the consultation to improve its usefulness.
267. We consider that this level and scale of guidance strikes the right balance between these considerations: recognising the diversity of the sector and supporting consistency of approach. We have offered clarification and some examples but have avoided detailed examples that are less likely to apply to all providers. Long lists of detailed examples may encourage some providers to treat those examples as the correct or best way to meet our requirements when this may not be the case in their particular circumstances. Providers will be able to deliver the best outcomes for their students by applying our requirements to their individual contexts. We do not want to push them towards a particular approach when the evidence from their own context may indicate that another approach may be more appropriate for their students.
268. In addition, we know that some representative bodies are producing guidance on these issues, and anticipate that this could be tailored for the particular needs of groups of similar providers.

Decision

269. We have carefully considered requests for additional detailed guidance relating to the minimum content requirements. For the reasons explained above, we consider that the level of detail in the guidance proposed at consultation is appropriate and that providing more detailed advice could have a negative effect on the appropriateness of the interventions chosen by providers for their own students and context. We are not, therefore, issuing further guidance on how providers could meet the minimum content requirements. However, this does not preclude us from issuing further guidance in future if we consider this appropriate.

Proposal C: Capacity and resources

270. Proposal C of our consultation set out our proposed requirement that higher education providers must ensure that they have the capacity and resources needed to secure compliance with proposed condition E6. While the regulatory framework already sets out that providers should ensure that they have resources to remain compliant with all conditions of registration in condition D (financial viability and sustainability), this proposal is designed to ensure that a provider allocates specific and appropriate resources to addressing harassment and sexual misconduct.

Proposal to require providers to ensure capacity and resources to maintain compliance with condition E6.

Consultation questions

Question 8a: Do you agree or disagree with the proposal that a provider should be required to have the capacity and resources necessary to facilitate compliance with this condition? Please give reasons for your answer.

Question 8b: Do you have any alternative suggestions for the proposal in question 8a? If so, please explain and give reasons for your view.

Summary of respondents' views

271. There was support from the majority of respondents to the questions on Proposal C. Around three in five respondents to these questions agreed to all or to some extent with the proposal (62 per cent), compared with a smaller group (30 per cent) who disagreed with some or all aspects of the proposal. A further small proportion (eight per cent) chose to neither agree nor disagree.
272. Higher education providers that responded to these questions were split almost equally between agreeing (48 per cent) and disagreeing (45 per cent). However, the vast majority of students and student representative bodies (85 per cent) who responded to these questions agreed with the proposal.
273. Respondents who agreed suggested that higher education providers should already have the capacity and resources to address harassment and sexual misconduct. Some (11 per cent) of the respondents who were in favour of the proposals in principle also asked for more information about what the requirement is likely to mean in practice, such as how compliance with this condition will be monitored and enforced; and what, if any, resource obligations are required beyond what is already being done in the sector. In addition, some respondents who agreed with the proposed requirement (18 per cent) suggested that additional resources need to be made available to meet the new resource needs of the condition, or providers may have to reduce other services. A small number of respondents who agreed suggested that the resource requirements may have a more significant impact on smaller or more specialist providers with limited budgets or staff capacity. A small number of respondents considered that this proposal was not meaningful if it was not enforced.

274. Respondents who disagreed pointed to sector-wide resource constraints (26 per cent). Some respondents (13 per cent) also argued that the requirement hindered institutional autonomy in terms of where providers should direct their resources. Other reasons given for disagreeing with the proposal were that:

- a. the new requirement duplicates requirements set out in the OfS's Condition D: financial viability and sustainability
- b. a lack of additional funding to support providers to meet this requirement would lead to an imbalance of practice between other areas of student support
- c. the wording of the requirement is ambiguous.

275. Of those who provided additional suggestions, 56 per cent focused on resources with some suggesting additional funding is required to meet the requirements in the condition. 23 per cent suggested that this element be removed from the condition. Others suggested clear guidance and for the OfS to provide toolkit advice and guidance to support providers in meeting this requirement.

Our response

276. We have reviewed all of the comments relating specifically to this proposal. We have also thought about the condition as a whole when considering resources and capacity, as well as comments made in relation to the proposals for implementation. More information on implementation can be found in the section relating to Proposal G.

277. We have taken into account the views of respondents and have sought to reduce burden where possible while still delivering our original policy intent for the condition. As a result, we have made a number of changes to the condition and accompanying guidance to reduce regulatory and resource burden, as well as provide clarity. Changes include amending the requirements for a single document and the content requirements, changes to requirements for non-disclosure agreements and relationships between staff and students, and considerably extending the implementation timeline. More information about how we consider that these changes reduce regulatory and resource burden can be found in the relevant sections in this document.

278. We have already acknowledged that the new condition will create some extra burden for providers due to introducing a new set of regulatory requirements. We also accept that this burden may be higher for some providers compared with others, either due to their size and shape or due to the extent of work that has already been done in this area as a result of self-regulation. We consider that this additional burden is appropriate as it should help to ensure providers address harassment and sexual misconduct and support their students.

279. While we acknowledge the additional resource and capacity burden the new condition places on providers, we also want to ensure that appropriate resources are identified and used in a way that best supports the main policy aim of the condition for providers to prevent harassment and sexual misconduct and respond effectively if incidents do occur. We therefore consider that including this provision in condition E6, rather than relying only on the provisions in condition D, as was suggested by some respondents, will ensure providers appropriately prioritise this work.

280. Our general duties require the OfS to have due regard to the need to protect the institutional autonomy of higher education providers. We have considered the responses that argued that the requirement in relation to capacity and resources hinders institutional autonomy by requiring a provider to direct resources to a specific cause. We have balanced the importance of institutional autonomy against the evidence that harassment and sexual misconduct can cause harm to students (see Annex D). We consider that the evidence has demonstrated that self-regulation – which gives providers maximum latitude to allocate resources as they see fit – has not been sufficiently effective in achieving meaningful and consistent change across the sector and that further intervention is necessary to achieve the aim of tackling harassment and sexual misconduct. However, having considered institutional autonomy, we have not specified how much resource a provider should invest in supporting this work, or how this resource should be managed, used or evaluated. It is for individual higher education providers to determine the specific actions they should take to meet our requirements on harassment and sexual misconduct within their own context.
281. We recognise that introducing a new condition of registration with a specific requirement to have sufficient capacity and resources to facilitate compliance will likely add some additional resource and capacity burden on providers and this may vary from provider to provider. We also note that significant steps have already been taken in parts of the sector in recent years to address harassment and sexual misconduct, such as in response to the OfS’s statement of expectations as well as other work undertaken individually or with the support of charities and mission groups. As a result, we expect that providers will already have some of the information required to meet the new requirements.
282. A provider will need to consider how far the steps it is taking to address harassment and sexual misconduct meet the requirements of condition E6. If a provider is already meeting these requirements, it will have discretion over whether it wishes to take further steps. Furthermore, a provider should consider its own context and the prevalence of harassment and sexual misconduct incidents to determine what it considers to be appropriate levels of resource to tackle these issues. Where there is a higher prevalence of harassment and sexual misconduct issues at a provider, a higher level of capacity and resource may be required to address it. To reduce burden in relation to capacity and resources, a provider could also choose to collaborate with other organisations to support the provision of services.
283. Some responses requested further support and guidance from the OfS on the precise level of resource and capacity required to satisfy the condition. Our view is that a provider should assess its own context to determine the level of resource it will need to allocate to meet the requirements of condition E6. This is because it will be familiar with its own context and will have information about the prevalence of incidents of harassment and sexual misconduct that occurs in its setting. Our judgement about whether a provider has allocated sufficient capacity and resources to meet the new requirements is likely to be informed by staffing arrangements, any evaluation carried out of the effectiveness of training, policies and procedures, as well as other work completed by the provider to understand the prevalence of harassment and sexual misconduct.
284. Following implementation of condition E6 and as part of our general monitoring activities, we may consider publishing information about the most effective approaches adopted by providers, if we think this would be helpful in improving practice across the sector. Similarly,

we may, where we consider it appropriate, publish outcomes of any investigations and regulatory decisions, regardless of whether a breach of the condition has been found.

285. Some respondents asked the OfS to provide further funding to providers beyond current recurrent grant funding to address the capacity and resource burden of the new condition. We do not have any plans to provide additional funding to support this activity. We have already invested in this area through previous Catalyst funding rounds, which resulted in the development of resources that may be of use to providers in tackling harassment and sexual misconduct.³⁰ Providers should be aware that using the resources developed through the Catalyst funded projects does not automatically ensure compliance with condition E6 or any other condition of registration. In addition, we recently ran a public call for evidence inviting views on how the OfS could develop its funding approach, including in relation to the activities that we fund, how we determine funding allocations, and the factors we prioritise in our decision-making.³¹ While this does not preclude the OfS offering further targeted funding to support tackling harassment and sexual misconduct in the future, it is important that all funding decisions are consistent with our general policy approach.

Decision

286. We have decided to proceed with this proposal in relation to capacity and resources with no amendments. This means that a provider will be required to ensure that it has the capacity and resources necessary to comply with ongoing condition E6.

³⁰ Resources for higher education providers, OfS. Available at: www.officeforstudents.org.uk/advice-and-guidance/student-wellbeing-and-protection/prevent-and-address-harassment-and-sexual-misconduct/.

³¹ Approach to OfS public grant funding, OfS. Available at: www.officeforstudents.org.uk/publications/approach-to-ofs-public-grant-funding-call-for-evidence/

Proposal D: Freedom of speech

Proposal relating to freedom of speech (questions 9a and 9b)

Consultation questions

9a. Do you agree or disagree with the proposal that a provider should be required to comply with the proposed condition in a manner that is consistent with the proposed freedom of speech principles? Please give reasons for your answer.

9b. Do you have alternative suggestions to the proposal in question 9a? If so, please explain and provide the reasons for your view.

Summary of respondents' views

287. Proposal D set out our intention to require providers to comply with the requirements of the proposed condition in accordance with the freedom of speech principles specified by the OfS. These principles included a requirement for a provider to apply a rebuttable presumption to the effect that exposure of a student to course materials, and statements made and views expressed by a person as part of teaching, research or discussions about any subject matters connected with the content of a higher education course, are unlikely to constitute 'harassment', unless otherwise demonstrated that these matters do in fact amount to harassment.
288. Over half of respondents (56 per cent) agreed with the proposal to include these principles, but a significant minority disagreed (32 per cent). Around half (55 per cent) of higher education providers agreed. In general, a greater proportion of providers and individuals working at higher education providers agreed with our proposals (67 per cent) than students and student representative bodies (36 per cent agreed) and collective institutional responses from higher education providers.
289. A significant number of those who responded said that providers must already comply with requirements relating to freedom of speech, including any future legal obligations.
290. The Higher Education (Freedom of Speech) Act was at bill stage during our consultation period. Approximately 40 per cent of those responding to this question stated that they supported the inclusion of the principles because proposals should comply with the law and that freedom of speech is already embedded within higher education.
291. Most commonly, those who disagreed considered that the principles did not need to be included **because** there are already protections in law for freedom of speech, such as section 43 of the Education Act (No 2). They also pointed to the pending provisions in the Higher Education (Freedom of Speech) Act (which at that stage were at bill stage), and that it was unnecessary to include the principles on this basis.
292. Many respondents also asked that we provide further guidance, and in a few cases, legal advice, to support providers in navigating complex harassment and freedom of speech matters. Some of these respondents indicated overall support for the principles but thought

more guidance was needed for providers to be able to comply in practice. Others, however, suggested that they were unable to support the proposals without additional guidance on compliance with the requirements.

293. Other respondents mentioned the proposed 'rebuttable presumption'. Three per cent of respondents supported the addition of the rebuttable presumption, while eight per cent argued that it may increase harassment occurring under the guise of academic freedom. Two per cent of respondents suggested that the rebuttable presumption be removed. A number of respondents requested guidance about how the rebuttable presumption would work in practice.
294. It was well-recognised in consultation responses that the intersection between harassment and freedom of speech could be complex and requires careful consideration by providers. Some respondents suggested that the relationship between harassment and freedom of speech is beyond the scope of providers to resolve and that it places an unfair burden on the sector when there are already legal obligations on providers relating to freedom of speech. A small number of those responding to these questions considered that putting freedom of speech and harassment regulation together makes regulating in each area less effective.
295. The freedom of speech principles were also raised when we asked respondents to identify potential unintended consequences of our proposals, including consequences that might arise in connection with an individual's protected characteristics. Responses to this question (question 13), as well as to questions 9a and 9b, identified concerns from several respondents that placing emphasis on freedom of speech might mean that individuals would feel encouraged to engage in 'hate speech' or harassment, or that some students may feel they would not be protected from harassment.
296. When asked for alternative suggestions to our proposals, 25 per cent suggested that we should make reference to the Higher Education (Freedom of Speech) Act 2023, which had not yet passed at the time we consulted. A similar number suggested removing the provision entirely on the grounds that the OfS did not have a duty to enforce free speech principles as part of its regulatory activity. Others repeated that they considered the principles to be unnecessary.

Our response

297. Responses on freedom of speech issues have emphasised that this is a complex area for providers and students to navigate. We proposed the freedom of speech principles because we are seeking to ensure that providers properly navigate the relationship between protecting students from harassment and protecting freedom of speech within the law, both of which are very important issues.
298. A number of respondents suggested that we remove this aspect of the condition for one or more of the following reasons:
- a. The OfS does not have a duty to enforce the freedom of speech principles.
 - b. Freedom of speech is already adequately protected in law, and therefore the principles are unnecessary and/or confusing.
 - c. Reiterating individuals' rights to freedom of speech could increase harassment.

299. We have carefully considered these issues. Providers are under long-standing freedom of speech obligations, including for example section 43 of the Education Act (No2). In 2023, the new Higher Education (Freedom of Speech) Act 2023 (HEFSA) received royal assent. If, and when, the duties within this Act are brought into force they will reinforce these obligations.
300. We agree with respondents who noted that there are already protections for freedom of speech within the law that apply to providers in the higher education sector. Some respondents commented that further highlighting freedom of speech may embolden others to engage in what they consider 'hate speech' or harassment, or that setting requirements for freedom of speech and harassment in the same condition of registration weakens regulation of both issues. However, we consider that both these issues are important and directly related to the interests of students. Incidents of harassment can have a particularly detrimental impact on students' higher education experiences, and freedom of speech is an essential underpinning for the quality of their education. The regulatory requirements we are setting in the condition that address harassment seek to protect students' interests in this respect. The provisions relating to freedom of speech will assist providers in navigating the interaction with those obligations.
301. Simply complying with the freedom of speech principles when complying with the new regulatory requirements for harassment does not guarantee that a provider will meet its free speech obligations. A provider will need to ensure it continues to consider the facts of each case, seeking its own legal advice where necessary. It is important to note that the freedom of speech principles do not protect unlawful speech and that providers are not required by condition E6 to restrict lawful speech.
302. As explained above, the impact of curtailing lawful free speech and academic freedom in higher education is very serious as it affects the quality of students' education and compromises the academic experience they receive. The OfS has a legitimate role in ensuring this fundamental tenet of higher education is preserved in the student interest. Including the freedom of speech principles in this condition is one way for us to achieve this.
303. Explicitly stating that a provider must comply with the requirements of this condition in a manner that is consistent with the freedom of speech principles will mean providers have to place significant weight on the importance of freedom of speech within the law, academic freedom and tolerance for controversial views in an educational context. We consider that providers would need to consider this interaction in any case, and that therefore this requirement does not create a new burdensome requirement but rather helps clarify for providers how the condition interacts with their existing free speech obligations and is designed to assist providers in navigating these complex issues. This approach may also minimise the likelihood of policies and processes relating to harassment and sexual misconduct containing provisions which encourage or result in a 'chilling effect' on lawful speech.
304. As set out in our response to Proposal A, the definition of harassment we are using in the new condition draws on the definition in the Equality Act 2010. However, it is important to note that under the Equality Act 2010 a provider is not legally responsible for harassment of one student by another student, or harassment by third parties outside of those employed by the provider or its agents. This does not affect a provider's obligations under the Equality Act 2010 and its compliance with those obligations. Instead the wording of section 26 of the

Equality Act 2010 is used as a basis for defining the scope of harassment for the purposes of this condition of registration.

Rebuttable presumption

305. We consider the 'rebuttable presumption' in the condition to be an important requirement to ensure that freedom of speech is adequately considered in academic settings. This requirement is compatible with technical guidance published by the Equality and Human Rights Commission (EHRC) on managing the Equality Act 2010 duties for further and higher education providers,³² first published in 2014.

306. We have included the rebuttable presumption in the condition to explain that students being exposed to any of the following is unlikely to amount to harassment:

- the content of higher education course materials, including but not limited to books, videos, sound recordings, and pictures; and
- statements made and views expressed by a person as part of teaching, research or discussions about any subject matter which is connected with the content of a higher education course.

307. While the rebuttable presumption is that these things will not amount to harassment, a provider should ensure that it considers the circumstances of each case. In practice, the rebuttable presumption means that when a provider is considering speech which might be deemed as offensive and expressed as part of teaching, research or discussions within a higher education academic setting, it should start from the assumption that it is not harassment and would need to convincingly rebut that presumption if it considers that it does constitute harassment.

308. One respondent suggested that the condition should be qualified so that the OfS would accept the judgement of a provider in cases relating to free speech, provided the outcomes are within the range of reasonable responses that could be reached in that case. The OfS needs to reach its own view about compliance with its conditions of registration; this is reflected in the way our enforcement powers are framed in HERA. Further, the independent assessment of compliance with regulatory requirements by the OfS rather than by providers themselves serves the student interest in that providers may face intervention from the regulator where they fail to comply with important requirements designed to protect students. As we describe in paragraphs 63 to 68 of the guidance, we monitor and enforce compliance with this new condition on the basis set out in the regulatory framework and in 'Regulatory advice 15: Monitoring and intervention'.³³

309. A number of respondents requested further guidance, including legal advice, on how to meet their requirements in relation to free speech, academic freedom, and harassment. Providers have had obligations relating to harassment and freedom of speech for many years and so should already be balancing these requirements. This new condition operates within the

³² Equality and Human Rights Commission, 2014, <https://www.equalityhumanrights.com/equality/equality-act-2010/technical-guidance-further-and-higher-education>.

³³ 'Regulatory advice 15: Monitoring and intervention'. Available at: www.officeforstudents.org.uk/publications/regulatory-advice-15-monitoring-and-intervention/.

existing legislative and regulatory landscape with which providers should already be familiar. However, to provide further clarity, we have included additional wording in the condition in the freedom of speech principles to state:

E6.9: For the avoidance of doubt, paragraph E6.8 applies in respect of (but is not limited to) decisions taken by the provider on whether or not its policies and procedures will include or (as the case may be continue to include) content on matters relating to **harassment** to the extent that such content:

- a. goes further than its obligations under the Equality Act 2010 or any other legal requirement (for example, by adopting or applying pre-existing legal concepts of harassment to conduct related to speech that only takes place between students); and
- b. could reasonably be considered capable of having a negative impact on, or having the object or effect of restricting, freedom of speech and/or academic freedom.

310. We have included the following additional wording in the guidance accompanying the new condition at paragraph 58:

- a. 'The OfS acknowledges that the Equality Act 2010 does not currently give rise to legal obligations for a higher education provider to address conduct by a student that amounts to harassment.
- b. One of the aims of this condition is to create obligations for higher education providers in respect of dealing with harassment that goes further than the existing law, but only in so far as that does not involve doing things that could reasonably be considered to have the object or effect of restricting freedom of speech and/or academic freedom.
- c. A provider will need to carefully consider its freedom of speech obligations and ensure that it has particular regard to, and places significant weight on, those obligations when creating and applying policies and procedures that are designed to help protect students from harassment by other students.
- d. Freedom of speech obligations should not be considered to be a barrier to creating or applying policies and procedures in respect of types of conduct that may amount to harassment unless such policies and procedures could reasonably be considered to have the object or effect of restricting freedom of speech within the law and/or academic freedom.'

311. We took these requests for further guidance and advice into account in our decision to retain the freedom of speech principles in this condition – we consider the free speech principles are helpful in providing clarity about the weight we expect a provider to place on the importance of freedom of speech within the law, academic freedom and tolerance for controversial views in an educational context.

312. We have further clarified our expectations of providers and do not consider it appropriate for the OfS to issue legal advice on these matters. A provider should seek its own legal counsel if necessary in order to meet our regulatory requirements and any other relevant legal

obligations. We consider that the condition does not require a provider to take a step that interferes with lawful free speech in order to achieve compliance with the condition.

Decision

313. We have decided to proceed with this proposal to require a provider to meet the requirements of condition E6 in a manner that is consistent with the freedom of speech principles. We have included additional wording in the condition and expanded the associated guidance. The full requirement is replicated below for completeness.

Requirements relating to freedom of speech

E6.8 The provider must comply with the requirements of this condition in a manner which is consistent with the **freedom of speech principles**.

E6.9 For the avoidance of doubt, paragraph E6.8 applies in respect of (but is not limited to) decisions taken by the provider on whether or not its policies and procedures will include (or, as the case may be, continue to include) content on matters relating to **harassment** to the extent that such content:

- a. goes further than its obligations under the Equality Act 2010 or any other legal requirement (for example, by adopting or applying pre-existing legal concepts of harassment to conduct related to speech that only takes place between students); and
- b. could reasonably be considered capable of having a negative impact on, or having the object or effect of restricting, freedom of speech and/or academic freedom.

Proposal E: Requirements relating to restricting the disclosure of information

314. The consultation asked respondents whether they agreed or disagreed with the proposal to prevent providers from using non-disclosure agreements in cases relating to harassment and sexual misconduct, and whether they supported any of the alternative options outlined or had other suggestions that would address the harms we want to address. Respondents were asked to give reasons for their answers.

Proposal relating to prohibiting restricting the disclosure of information

Consultation questions

10a: Do you agree or disagree with the proposal to prohibit a provider from using provisions which have the effect of preventing or restricting the disclosure of information about incidents relating to harassment or sexual misconduct? Please give reasons for your answer.

10b: Do you support any of the alternative options we have outlined or do you have any other proposals? If so, please explain and provide reasons for your view.

Summary of respondents' views

315. The proposal received strong support from consultation respondents with 85 per cent of respondents agreeing with one or more aspects of the proposal. The majority of providers with collective responses agreed (83 per cent) and all of the consultation responses from students, student representatives and advocacy groups were in agreement with the proposals. Nine per cent of respondents disagreed with one or more aspects of the proposal.
316. Twenty six per cent of respondents who agreed with the proposal to prohibit providers from using non-disclosure agreements (NDAs) in cases relating to harassment and sexual misconduct suggested there was a need to maintain confidentiality during any investigation process to ensure fair outcomes.
317. Some respondents requested more information and guidance from the OfS on areas such as disclosing the outcomes of complaints, and what is meant by 'reasonable steps' in relation to the third party element of the proposal.
318. Six per cent of respondents agreed in principle that the use of NDAs in cases relating to harassment and sexual misconduct is inappropriate, but disagreed with the proposal to introduce a regulatory requirement, either because they thought there was a lack of evidence for the need for regulatory action, or because the Higher Education (Freedom of Speech) Act (originally scheduled to be enacted on 1 August 2024) would address this issue.
319. A small proportion of respondents expressed concerns about how providers would enforce the third party element of the proposal, and another four per cent raised concerns regarding the element of the proposal that would prevent providers from enforcing any such agreements previously agreed.

320. Other issues raised by a small number of respondents during the consultation included:

- a. A lack of clarity about what defines an NDA for the purposes of the condition.
- b. Questions about whether informal arrangements between a provider and students count as NDAs for the purposes of the condition.
- c. A suggestion that NDAs might be beneficial for some students where they want one, or where they would receive 'closure' following an incident of harassment or sexual misconduct.
- d. A view that not having NDAs would prevent providers from sharing outcomes of investigations with those involved.

Our response

321. In reviewing the responses from the consultation, it is clear that the proposal to prohibit the use of NDAs in cases relating to an allegation of harassment and sexual misconduct which affects one or more students is supported in principle, with 85 per cent of respondents agreeing with one or more aspects of the proposal.

322. In reaching a decision on this proposal, we also considered evidence of the harms that can be caused by the use of NDAs in relation to harassment and sexual misconduct. The issue of using NDAs in the context of harassment and sexual misconduct allegations has been the cause of much controversy as there are concerns that victims are pressured into signing NDAs, silencing them from speaking about their experiences, potentially protecting the reputations of perpetrators, and reputations of providers where incidents may have been improperly handled. This causes issues of transparency and accountability in the sector whereby providers may protect their reputation at the expense of how effectively they support students, which may also serve to allow incidents of harassment and sexual misconduct to continue

323. In 2019, following a call for evidence and inquiry into these matters, the Women and Equalities Committee published a report on the use of NDAs in the workplace on matters relating to discrimination, including sexual harassment. Its report highlighted how NDAs contribute to a culture of secrecy, covering up bad behaviour in exchange for compensation. The report particularly highlights a concern 'that some employers are using NDAs to avoid investigating unlawful discrimination and harassment and complaints holding perpetrators to account'.³⁴ Another area of concern highlighted in the report is the power difference between, in this example, an employer and employees making complaints who may be compelled to sign NDAs. It is our view based on available evidence that this culture of secrecy rather than accountability, and this power differential, are also present for providers and students who may have experienced incidents of harassment and sexual misconduct.

324. In 2019, The Independent reported that UK providers had spent approximately £87 million on around 4,000 settlements through NDAs in the previous two years, specifically to keep

³⁴ Page 15 of 'The use of non-disclosure agreements in discrimination cases', available at <https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/1720/1720.pdf>.

allegations of bullying, harassment and sexual misconduct quiet.³⁵ This figure was discovered through freedom of information requests to nearly 140 universities, of which 96 responded. This does not, therefore, represent the whole sector in England and the number of NDA settlements and related costs are likely much higher.

325. In 2020, the BBC reported that 300 NDAs had been used to resolve student grievances since 2016 in 45 universities.³⁶ This information was collected from providers through freedom of information requests. The BBC estimated that £1.3 million had been paid out by providers in settlements for NDAs, with individual payout amounts ranging from £250 to £40,000. The true figure for the sector, however, is likely to be much higher as this information came from the 45 universities that responded to the freedom of information request.

326. While we acknowledge that the higher education sector has made some progress in addressing this issue, this has not been consistent for all providers. In January 2022, the then Minister for Higher and Further Education encouraged providers to commit to not using NDAs in cases of sexual harassment and misconduct. At the time of writing, 86 providers in England have signed the 'can't buy my silence' pledge, this accounts for only approximately 20 per cent of registered providers in England.³⁷ There has been an increase in the number of providers registered with the OfS that have signed the pledge since we published our proposals to introduce regulatory requirements in this area. However, this progress has been marginal and this means the risk the harms that can be caused by the use of NDAs remains for many students.

327. The Office of the Independent Adjudicator for Higher Education (OIA) has published an updated good practice framework, which states that it is not good practice to ask a student to sign a confidentiality agreement or non-disclosure agreement as part of an offer to settle or resolve a complaint. This is because 'such agreements can leave the student feeling that their complaint has not been listened to or taken seriously and can mean that learning from the complaint is lost'.³⁸ Overall, it is our view that the evidence of harm of NDAs and the scope of the problem is sufficient for us to proceed with regulatory intervention in the best interests of students.

328. We have also considered the appropriateness of introducing regulatory requirements relating to the disclosure of information in light of the Higher Education (Freedom of Speech) Act (HEFSA) which received Royal Assent in May 2023. The Act contains a new duty on providers to secure that they do not enter into NDAs, as outlined above. However, at the time of writing, the commencement date for this element of HEFSA is unknown. We have, however, aligned our regulatory approach with the requirements set out in HEFSA to avoid confusion should those statutory provisions come into force at a future date. Uncertainty over when or whether this statutory duty will come into force highlights the importance of

³⁵ See 'UK universities spent £87m on 'gagging orders' to keep bullying and sexual misconduct claims quiet', available at <https://www.independent.co.uk/news/education/education-news/universities-uk-gagging-orders-scandal-sexual-misconduct-bullying-a8874401.html>.

³⁶ See <https://www.bbc.co.uk/news/uk-51447615>.

³⁷ For more information, see: <https://www.cantbuymysilence.com/uni-pledge>.

³⁸ Office of the Independent Adjudicator, 2022, 'Good Practice Framework – Handling complaints and academic appeals'. Available at: <https://www.oiahe.org.uk/resources-and-publications/good-practiceframework/handling-complaints-and-academic-appeals/>.

introducing new regulatory requirements through condition E6 to ensure that students are protected from the harms of NDAs.

329. Having considered consultation responses and the available evidence, we have decided to introduce regulatory requirements that prohibit providers from using NDAs from **1 September 2024**. This is because it remains our firm view that it is unacceptable for any student to be prevented from discussing their experiences of harassment or sexual misconduct and we want to protect victims of harassment and sexual misconduct who may want to share information about their experiences.
330. As our primary regulatory interest in this condition is protecting students from being prevented from speaking about their experiences of harassment and sexual misconduct, we have narrowed this provision so that it only applies to students. We recognise that obligations may be necessarily placed on staff to uphold and maintain the integrity and fairness of complaints and disciplinary processes. However, we consider that, in line with the wider requirements of the condition, providers should avoid restricting staff from drawing attention to or sharing information about issues of this kind except where necessary to allow these processes to function properly.
331. We have decided this requirement will be implemented on 1 September 2024 because we want to stop the detrimental impact that the use of NDAs can have on students. We considered a longer implementation timeframe in line with the approach we are taking to the other requirements of the condition as we recognise that effective policies may take time to implement, and alignment with other requirements would produce a more consistent implementation timeframe. However, we consider that this focused restriction does not need the same time as other elements of the condition. Moreover, we expect providers will already have been making progress on these matters as HEFSA was originally scheduled to come into force from 1 August 2024 and so they would have a statutory duty to not enter into NDAs on these matters from that date. Providers have also been encouraged to sign up to the pledge to not use NDAs since January 2022 and making the necessary changes to meet this requirement should not be onerous in practice. There is now uncertainty around if and when HEFSA requirements will come into force, therefore there is a lack of clarity as to whether statutory duties on NDAs will come into force leaving a risk that a gap will remain where students are not be protected from signing NDAs by the HEFSA. For these reasons and uncertainty around the HEFSA, as well as our commitment to protecting students from being unable to talk about their experiences, it is our view that the implementation date of 1 September 2024 is appropriate. This will capture the new cohort of students beginning courses in autumn 2024.

Defining a non-disclosure agreement

332. Some respondents requested further guidance on what constitutes an NDA in the context of the condition of registration. For example, whether the requirement only applies to formal NDAs (i.e. a signed legal contract), or whether any form of 'informal' NDA would also be prohibited. Our view is that all agreements (whether formal contracts or less formal exchanges such as those by email and entered into without legal representation) that compel or seek to stop a student, or students, from disclosing information about their experiences are likely to carry similar harms to an NDA. Permitting their use would undermine our policy aim

of protecting students and ensuring they are not prevented from speaking about their experiences of harassment and sexual misconduct.

333. Providers may hold, or be perceived to hold, power over students so that, even for informal agreements, students may fear repercussions from their provider and feel compelled to agree to arrangements or feel they are unable to share their experiences of harassment and/or sexual misconduct. We are also concerned that if we introduce regulatory requirements only for formal NDAs, providers may shift to the use of more informal agreements which would have a similar effect and would not protect students from the harms of NDAs. Informal NDAs are therefore unacceptable and must not be used by providers.

Restrictions agreed prior to the condition taking effect

334. We have carefully considered the comments about our proposal that providers should not rely on or enforce restricting provisions in respect of students initiated before our regulatory requirements take effect. We recognise that some students will want to ensure their agreements remain in place and that any proposed change to these agreements may cause concern. In addition, some existing NDAs might cover other matters such as financial remedies, which one or both parties may want to preserve.

335. We have decided that we will not apply our new regulatory requirements retrospectively to NDAs in place prior to 1 September 2024. This is because we do not want to undo agreements that resolve matters for students and we want to minimise burden on providers that might otherwise need to revisit and potentially reframe existing agreements to ensure the restricting provisions meet regulatory requirements. Although we are not applying our requirements to existing NDAs, we expect that providers should where possible avoid relying on, or enforcing, existing NDAs. We know providers will need to carefully consider this on a case-by-case basis, but we expect that providers will adhere to the principle that students should be able to speak freely about their experiences of harassment and sexual misconduct.

Third party NDAs

336. A small number of respondents suggested that it would be difficult for providers to take all reasonable steps and effectively implement a policy which ensures their students do not enter into NDAs with third parties. For example, this would, they argued, require them to intervene in contracts between students and their employers on placement years and degree apprenticeships. We have reflected on these comments and taken them into account in our decisions.

337. The requirement we proposed was for a provider to 'take all reasonable steps' to prevent NDAs being used in harassment and sexual misconduct cases between registered students and 'any other person'. We have reviewed this position in light of the responses and have decided that we will not proceed with this aspect of our proposal. We note that there would likely be regulatory burden associated with providers implementing this requirement and recognise this burden could be increased in some circumstances if a provider does not have formal relationships with relevant third parties, for example where a student has arranged their own placement or study exchange opportunity.

338. Although we are not proceeding with this aspect of our proposal, we consider that a provider including such a requirement in its contract with third parties, such as placement providers

and organisations offering 'sandwich year' work placements, could be regarded as a significant and credible step the provider is taking, as required by the new condition of registration to address harassment and sexual misconduct so that its students are protected from the harms of restricting the disclosure of information.

Where NDAs may be considered beneficial for those who have alleged and/or experienced incidents of harassment and/or sexual misconduct

339. A small number of respondents suggested that in some cases, NDAs can be beneficial to those who have alleged and/or experienced incidents of harassment and/or sexual misconduct, providing resolution and privacy following a distressing period of their lives. We are also aware that NDAs may facilitate resolution of complaints and litigation for all parties involved, including compensation as a potential form of redress for a victim of harassment and sexual misconduct. This may benefit individuals, but it can be to the exclusion of more structural or collective benefits. It may, for example, protect perpetrators while other students are exposed to the risk of harm. It may also hide any shortcomings of a provider in addressing harassment and/or sexual misconduct for its students. In addition, we know that an inherent power imbalance exists between a provider and a student, which may influence the outcome in some cases and students may enter into an NDA because of concerns about reprisals or adverse consequences on their studies or degree outcomes.

Decision

340. We have decided to introduce regulatory requirements which prohibit a provider from entering into contractual provisions that stop or restrict the disclosure of information about an allegation of harassment or sexual misconduct. This requirement will take effect from 1 September 2024.

341. Our commitment to ensuring victims are not restricted from discussing their experiences of harassment or sexual misconduct, allowing for accountability and transparency, is such that we consider it important to implement regulatory requirements in relation to this issue as soon as possible. This will provide a robust enforcement mechanism should a provider continue to use NDAs.

342. We have adopted condition E6.10 as set out in Proposal E of the consultation, but have narrowed the requirement so that it applies to students only. In addition, we have removed the following requirements:

- a. Providers to not rely on or enforce any restricting provisions in any way after the date this condition takes effect (including, but not limited to, by continuing with a form of reliance or enforcement that was initiated before the date this condition took effect);
- b. Take all reasonable steps to prevent any person from:
 - i. including restriction provisions in a contract that applies to students and is formed or varied on or after the date this condition takes effect
 - ii. relying on or enforcing restricting provisions in any way in respect of students after the date this condition takes effect (including, but not limited to, by continuing with a form of reliance or enforcement that was initiated before the date this condition took effect).

343. The regulatory requirement relating to the disclosure of information which will take effect on 1 September 2024 is replicated below for completeness:

Requirements relating to restricting the disclosure of information

E6.10 The provider must not include any **restricting provisions** in any contract formed or varied on or after the date this condition takes effect.

Proposal F: Requirements relating to personal relationships between relevant staff and students

Proposal relating to personal relationships between relevant staff and students

344. Proposal F of our consultation set out options relating to personal relationships between students and relevant members of staff, focusing on two particular options. The purpose of these proposals, as stated in the consultation document, is to address the increased likelihood of harassment and sexual misconduct occurring in personal relationships between students and relevant staff members because of the actual and potential abuse of power and conflicts of interest that can arise. It is our view that there is a power imbalance between students and staff, especially where a member of staff has a supervisory, management, support or teaching responsibility for a student. Staff could therefore subject students to harassment or sexual misconduct by abuse of that power imbalance.

345. The consultation set out the following behaviours this proposal seeks to address:

- a. 'Conflicts of interest or abuses of power that may occur within ostensibly consensual personal relationships between students and relevant staff members. For example, even where a relevant member of staff does not seek to abuse their power, students could potentially experience the negative effects of an inherent power imbalance. Students may feel pressured to take a personal relationship with a relevant member of staff further than they might otherwise wish, or may not feel able to end such a relationship, on the basis that to do so may result in detriment. Such detriment could include, for example, not receiving a positive review or reference, an adverse impact on assessments of academic performance or not receiving PhD funding.
- b. A relevant member of staff actively abusing their power to coerce a student into a personal relationship with either the promise of favourable treatment or threat of detrimental treatment that could affect the student's higher education experience, outcomes, or career prospects.
- c. A relevant member of staff using the power imbalance that exists between a member of staff and a student to pressure a student to engage in physical or sexual activity amounting to sexual misconduct. This could include implicitly or explicitly threatening a student with detriment, (for example, in relation to assessment of the student's academic performance where the relevant staff member is involved directly or indirectly in that assessment). This could occur in a personal relationship where the relationship is consensual, or started consensually.' (paragraph 86 of the consultation document)

346. The consultation set out two main options. In determining the scope of the relationships, we defined 'personal relationship' as follows under E6.11:

k. '**personal relationship**' means a relationship that involves one or more of the following elements:

- i. physical intimacy, including isolated or repeated sexual activity
- ii. romantic or emotional intimacy; or
- iii. financial dependency.

347. The proposed condition defined 'abuse of power' as follows:

- a. '**abuse of power**' means a situation where a **relevant staff member** exploits a position of power in relation to a **student** so as to apply pressure in a way which:
 - i. may result in the **student** doing something, or refraining from doing something, that they may not have otherwise done; and
 - ii. that action or inaction could reasonably result in something that falls within the scope of a **personal relationship**The proposed condition defined 'relevant staff member' as follows:
 - m. '**relevant staff member**' means a member of **staff** who has direct or indirect academic responsibilities, or other direct professional responsibilities, in relation to that **student**.

348. In the consultation we said that 'staff with direct or indirect academic responsibility' was intended to capture all staff directly or indirectly involved with the education and assessment of a student. This would likely include any staff member with teaching responsibility for that student and anyone involved in determining a student's assessment outcomes, directly or indirectly (e.g. those involved in setting degree classification algorithms). 'Staff with other direct professional responsibility for a student' was intended to capture all other staff with a direct professional or pastoral responsibility for a student, for example, mental health advisers, staff operating student complaint processes, and security personnel. The proposed wording of this provision intended to avoid capturing relationships between students and individuals in staff roles (who may also be students) where there is less likelihood of a material power imbalance or risk of abuse of power.

349. The consultation presented Option A as our preferred option at that time. Option A proposed requiring a provider to register personal relationships between relevant staff and students.

350. This option would require a provider to:

- take all reasonable steps to require a relevant staff member to disclose personal relationships with students
- maintain a register recording these (including the nature of that personal relationship)
- and manage and address any actual or potential conflicts of interest or abuse of power arising from or connected with any such personal relationships.

351. The consultation also presented Option B, a ban on staff-student relationships.

352. This option proposed that a provider must take all reasonable steps to ban personal relationships between relevant staff members and students as well as taking appropriate

steps, which would normally be dismissal of the relevant staff member, in circumstances where they refuse to end a personal relationship. As set out in the consultation, Option B would exempt existing marriages or civil partnerships that exist before the date this condition came into force and remains in existence.

353. The consultation also presented some alternative options that we had provisionally discounted at that stage. These options include:

- a. Not proposing any regulatory requirements in relation to personal relationships between staff and students.
- b. Proposing an option that would require a provider to develop and publish its own policy on staff-to-student sexual misconduct and impose any restrictions or prohibitions it considers appropriate.
- c. Proposing a prohibition on all staff-to-student relationships (not just where a staff member has a direct or indirect academic responsibility or other direct professional responsibility towards a student), with an exception for existing marriages or civil partnerships.

354. The consultation invited views on all of the options set out above and asked the below questions in regard to Proposal F.

Consultation questions

Question 11a: [Multiple choice] Assuming that the OfS introduces a new condition of registration E6:

A. Option A as proposed

B. Option B as proposed

C. An option similar to Option A but with some changes (in which case please set out the changes that you would suggest in the next question)

D. An option similar to Option B but with some changes (in which case please set out the changes that you would suggest in the next question)

E. Any of the alternative options considered in this proposal

F. None of the above

Question 11b: Please give reasons for your answer in question 11a above

Question 11c: Do you have any alternative suggestions to the options considered in Proposal F? Please give reasons for your answer.

Question 11d: We would welcome views on whether Option B or any of the other options considered should allow for other exemptions. Please give reasons for your view.

Summary of respondents' views

355. Overall, consultation respondents showed a preference for Option A or Option A with changes (62 per cent). Some preferred Option B as proposed or with changes (22 per cent). A small number (14 per cent) supported none of the proposed options while a handful supported alternative proposals set out in the consultation. 66 per cent of responses from students and student representative bodies preferred Option A or Option A with changes, 27 per cent preferred Option B or Option B with changes and six per cent supported none of the options. Similarly, collective responses from providers revealed that 65 per cent preferred Option A or Option A with changes, 20 per cent preferred Option B or Option B with changes and 13 per cent did not support any of the options.
356. Some feedback related specifically to Option A or Option B while some related to concepts and issues relevant to a number of options.
357. The primary reason for support of Option A was that it would allow for complexity and different contexts (15 per cent of respondents who agreed with Option A) and could account for any pre-existing relationships that would not, in the view of respondents, warrant disciplinary action (nine per cent). However, while Option A or a variation of it overall had the highest support, the responses still set out various concerns with this option. Primarily, concerns focused on privacy issues (nine per cent) including GDPR requirements and concern about potential interference with the Human Rights Act 1998, Article 8 (Right to respect for private and family life) as well as the potential impact on some protected characteristics (six per cent). In response to our question about the impact on individuals with protected characteristics, 10 respondents made points about forced disclosure of relationships and the impact on staff and students with protected characteristics, including sexual orientation.
358. Other issues raised by a small proportion of respondents included:
- a. Difficulties in managing such relationships (ten per cent).
 - b. That requiring a register would not address the power imbalance of such relationships and may be used as a tool for abuse (four per cent).
 - c. Reporting and maintaining a register of relationships would not discourage them and may legitimise them instead (seven per cent).
 - d. A view that the proposal was too prescriptive and represented overregulation (three per cent).
359. Alternative suggestions for Option A proposed by respondents included narrowing the scope of relationships to those staff with responsibility over academic studies or pastoral welfare (eight per cent) and that providers should have the ability to define the relationships included in the policy and deal with them on a case-by-case basis (eight per cent). A small number of respondents made suggestions about how to implement a register, or asked for further clarification on definitions.
360. Of those respondents who supported Option B or Option B with changes, ten per cent highlighted the inherent power imbalance in relationships between staff and students and ten per cent thought that a ban created a clearer line and removed risks associated with

interpretation and prevented grey areas. A reason for disagreeing with Option B, or variants of it, by respondents was the potential that it may drive relationships underground which could increase the risk of harm to students (17 per cent of those who disagreed). Several said that a ban would be too restrictive (16 per cent of those who disagreed).

361. The primary response from over half (51 per cent) of respondents who gave alternative suggestions for Option B was that additional exemptions should be included. Several (30 per cent of those who gave alternative suggestions) suggested additional pre-existing relationships that they thought should be included in the exemptions. Some also suggested the inclusion of long-term relationships which are not legally recognised as marriage (16 per cent of those who gave alternative suggestions). Students at roundtables also discussed the appropriateness of further exemptions.
362. When asked for alternative suggestions to the ones proposed, 65 respondents provided suggestions. 28 per cent of respondents thought that both proposed options represented overregulation, with some saying that providers should be able to self-regulate in this area and others stating that the relationships are between consenting adults. 20 per cent of respondents emphasised the importance of institutional autonomy in determining the process and outcomes for managing harassment and sexual misconduct. Training of staff and students in relation to this proposal was suggested by some with a few respondents suggesting that a dual approach of training and policy could be most effective. Several requested further guidance alongside the outcome of this consultation. Lastly, a handful suggested that this provision should be removed from the condition altogether.
363. Some respondents expressed concern about the interaction of Option A and Option B with the Article 8 right to a private life (six per cent of respondents who disagreed with Option A and five per cent of respondents who disagreed with Option B).
364. Some respondents, including students at our roundtables, wanted more information about the terms 'personal relationship' and 'relevant staff member.' For instance, two per cent of respondents who offered alternative suggestions to Option A thought that familial relationships could be understood to fall within the scope of this term, particularly given the inclusion of 'financial dependency' and 'emotional intimacy' in the proposed definition of 'personal relationship.'
365. Some (14 per cent of respondents who disagreed with Option A) also thought that the clause in Option A, about staff in breach of the policy normally facing dismissal, would potentially pre-determine a provider's decisions about individual cases, requiring changes to contracts and interfering with employment law obligations. Students who participated in our roundtables, however, mostly agreed that the consequences for staff who refuse to disclose a relationship should be serious.

Our response

366. We have carefully considered consultation responses on this issue and decided to introduce an option similar to an alternative option presented in the consultation, which was to require a provider to develop and publish its own policy on relationships between staff and students and impose the restrictions or prohibitions it considers appropriate, and which meets our requirements. We are clear, however, that this approach does not mean that students should not be adequately protected from conflicts of interest or abuse of power. While a provider has

some flexibility in deciding its policy approach to address relationships between staff and students, its action must have the effect of protecting students and it should carefully consider which policy option is likely to be most effective. We have said that a ban on intimate personal relationships is a step which would be considered to meet our requirements. A statement, on its own, which discourages relationships between staff and students will not be considered to meet our requirements.

367. The requirement that we are introducing – for a provider to take one or more steps to make a significant and credible difference in protecting students from any actual or potential conflict of interest and/or abuse of power – is framed to be more robust as it requires steps to be taken, not just considered, while retaining the flexibility for a provider to take into account its specific context. It has been developed to align with our general approach to tackling harassment and sexual misconduct. The condition explicitly identifies that a ban, as we had proposed in Option B, would be a way to achieve this. A provider will be able to implement steps that are appropriate for its particular context, but the steps that are taken must make a significant and credible difference.
368. We had provisionally discounted the option of asking providers to develop and publish their own policies because we were concerned that it could lead to inconsistency across the sector, including inconsistency in how well students are protected from harassment and sexual misconduct. However, as we considered the feedback on the full range of options, we identified this particular option as a way of achieving our policy intent while addressing some of the risks identified by consultation respondents, as well as accounting for the differences in preference for option A and B. We considered that the version of this option set out in the consultation could result in inadequate protections for students from harassment or sexual misconduct, and so we have developed this option since the consultation to mitigate this risk.
369. We consider that some policy options may be appropriate and effective for some providers but not others and that the benefits and risks associated with Option A and Option B as proposed at consultation may be more pronounced depending on the context for an individual provider and its students. This has informed our decision to require a provider to develop the details of its policies based on its own context. We have included guidance which may assist providers in determining the steps that are most appropriate for their context. This includes gathering evidence on prevalence, assessing complaints made about relationships between staff and students or consulting with students.
370. The requirement we are introducing also benefits from the clarity of the definitions of ‘intimate personal relationship’, and ‘relevant staff member’ that we proposed; we have refined these in response to feedback, as explained below.
371. The requirement we are introducing does not require a provider to take any particular approach to protecting students from any actual or potential conflict of interest and/or abuse of power. Rather, it gives a provider discretion to consider its context and introduce measures that are appropriate for its particular circumstances. The condition provides both an example of action which would constitute compliance (a ban on intimate personal relationships) and an example of action which would not – a statement disapproving or discouraging intimate personal relationships as the only step taken.

372. Introducing this requirement for a provider to take one or more steps to make a significant and credible difference in protecting students from any actual or potential conflict of interest and/or abuse of power, with the adjustments we have made, will allow all providers to adopt an approach suitable to their own circumstances. We consider that this requirement will guard against inadequate policies and ensure providers address the increased likelihood of harassment and sexual misconduct occurring in intimate personal relationships between staff and students. Although we recognise that this may mean there is more variability in practice across the sector, we consider that enabling providers to take an approach suitable for their context will help ensure that progress is made in this area while accounting for approaches that mitigate the risks identified in consultation feedback. Providers should carefully consider both the benefits and any risks associated with their policy choice and if there are opportunities to mitigate those risks.
373. In relation to Option A proposed at consultation, we carefully considered the issues relating to data protection, interaction with Article 8 of the European Convention on Human Rights (ECHR) and the impact on individuals on the basis of their protected characteristics. We considered these issues in detail and in the context of achieving our policy intent. This contributed to our decision to not introduce Option A as proposed at consultation, as we considered that we could achieve our policy intent by a different approach that, for instance, does not create a requirement to disclose a relationship which could put a staff member or student at risk due to their participation in the relation, or due to the nature of that relationship. We consider that a policy similar to Option A proposed at consultation may be appropriate for some providers and that they will be able to adequately address risks relating to mandatory disclosure by engaging with students, providing additional guidance or other means. However, we consider that it is not beneficial for us to impose this option for all providers at this time. If providers proceed with an approach similar to Option A, they should consider whether, in their context, it meets the requirement in itself or should be combined with other steps. In particular, providers introducing a register should consider how they are tackling abuse of power within registered relationships. We have also added wording at paragraph 47 of the guidance to clarify that ‘When implementing its disciplinary and conflict of interest processes, a provider may wish to consider circumstances in which the staff and/or student involved in an intimate personal relationship fear personal persecution, incrimination or other harmful consequences due to culturally taboo or illegal activity.’
374. As part of the requirement we are introducing, we have explicitly said that a ‘ban on intimate personal relationships’ is a step that could make a significant and credible difference in protecting students, as we think it is likely to be a particularly effective measure. In our consultation we identified the potential benefits of such a ban and we have also considered benefits identified by consultation respondents. However, we have carefully considered the points that relate to Article 8 of the ECHR and potential exemptions. Given this context, we have refined the way we define a ban of relevant relationships.
375. The definition of a ban included in the new condition is narrower than that proposed as Option B in the consultation. We have refined the scope of any ban by updating the definitions of ‘intimate personal relationship’ and ‘relevant staff member’ and have allowed for more exemptions. One reason for this is that we have considered further the implications of Article 8 of the ECHR (right to respect for private and family life). The new condition means that a provider may implement a more extensive ban than that defined in the condition if it is proportionate and appropriate for it to do so in its context.

376. A provider may also wish to ban intimate personal relationships with a narrower definition than used in the new condition. This could, alone or alongside other steps, be a way to meet the requirement to take one or more steps to make a significant and credible difference in protecting students from any actual or potential conflict of interest and/or abuse of power.
377. However, we have also focused the definition of a ban on the relationships we consider pose the greatest risk of harassment or sexual misconduct through any actual or potential conflict of interest. We are giving providers a clear steer about one way they could meet our requirements, while preserving flexibility if a provider does not consider this to be the most appropriate step in its particular circumstances. We consider that the benefits of imposing a ban are likely to outweigh the risks in most circumstances and that providers should be able to effectively mitigate any risks through guidance and clear communication.
378. We have also indicated in the guidance that a provider should make it clear to students that they can always seek support for any incidents of harassment or sexual misconduct that occur within a relationship with a staff member and that they would not be penalised for participating in a relationship. We expect that any disciplinary consequences for a breach of a provider's policy would be focused on the staff member involved rather than the student.
379. Within our definition of a 'ban on intimate personal relationships' we have also extended the exemptions from those presented at consultation to account for a wider range of pre-existing relationships that go beyond marriage or civil partnership. This reflects feedback about the relationships respondents thought should be exempted and particularly how exemptions might affect individuals on the basis of their protected characteristics.
380. Where a relationship is exempted from any ban, or where a provider does not ban intimate personal relationships, there remains a risk of abuse of power. We have added guidance indicating that providers should seek to manage and address conflicts of interest and abuse of power in intimate personal relationships between staff and students. We have also included in guidance some examples of the steps a provider could take to do this. We expect that even where an intimate personal relationship between a relevant staff member and a student is permitted, a provider should take steps to protect the student(s) from abuse of power and conflicts of interest.
381. We understand the points made about the proposed wording in Option A that indicated staff who breached a provider's policy should normally have their contract terminated by the provider. Considering those points, as well as our policy intent, we have amended this wording and stated instead that if a provider has a 'ban on intimate personal relationships' and a staff member breaches this ban, the provider would take appropriate steps consistent with its own disciplinary processes, with the possibility that the staff member could be dismissed. We have also included relevant guidance which says that consequences for a staff member who breaches the ban should be proportionate to the seriousness of their conduct, should guard against the likelihood of future abuses of power and should discourage intimate personal relationships between 'relevant staff members' and students.
382. We have considered regulatory burden in relation to Proposal F. We consider that the requirements we are implementing on intimate personal relationships between staff and students represent less regulatory burden for providers than either Option A or Option B proposed in the consultation, while also achieving our policy intent. Our approach allows a

provider to determine what is appropriate in its own context and ensures that it will consider what will make a difference for its students.

Terminology and definitions

383. We have considered requests for more information about the terminology and definitions we used in this proposal. We are concerned about the risk of abuse of power as it relates to harassment and sexual misconduct. We would expect any harassment or sexual misconduct perpetrated within any kind of relationship to be captured under the other requirements in this condition, but the requirements relating to relationships between staff and students are not intended to capture familial relationships or friendships. We have therefore updated the language in the condition from 'personal relationships' to 'intimate personal relationships'.
384. We also considered feedback on how the inclusion of 'financial dependency' in our definition of 'personal relationship' could bring familial relationships into scope. In addition, a relationship which began with financial dependency and subsequently evolved into an intimate personal relationship which featured another element (physical, sexual, romantic, or emotional intimacy) would be captured under the definition. A relationship involving financial dependency alone, without elements of 'physical intimacy including isolated or repeated sexual activity' or 'romantic or emotional intimacy' would not fall within the scope of this requirement because that could capture a wide range of relationships outside our policy intent.
385. We have considered requests for further detail about what we meant by 'emotional intimacy' in our definition of 'personal relationship'. We have added wording to the guidance to clarify that this is not intended to prohibit staff from fulfilling their duties and supporting students in an appropriate manner. The guidance also highlights that providers should be aware that emotional intimacy can be one of the key aspects of grooming behaviours, and could result in abuse of power. Our policy intent is to address abuse of power, and so we consider it important that emotional intimacy is included in our definition of 'intimate personal relationship' to signal clearly that grooming behaviours or other behaviours that are intended to engage a student or students in a prohibited relationship are not acceptable.
386. We also considered requests for further detail about the definition of 'relevant staff member,' as well as feedback on the range of staff who would be in scope. We consider that there is more potential for harm and abuse of power where a staff member has direct responsibilities for a student with whom they are in an intimate personal relationship. Members of staff with these responsibilities have direct influence over a student's academic and career outcomes and their experience in higher education. We have therefore refined our definition of 'relevant staff member' to remove the word 'indirect' so that it now includes only staff with 'direct academic responsibilities, or other direct professional responsibilities, in relation to that student'.
387. Removing the word 'indirect' narrows the scope of the definition to capture the relationships between students and staff that represent the greatest risk of abuse of power. We consider that many of the roles we originally intended to be captured by 'indirect', such as staff allocating accommodation, could be reasonably understood as having 'direct' responsibilities. We anticipate that removal of the word 'indirect' will help providers and individuals to better identify which staff fall within the scope of the definition of 'relevant staff member' for a particular student. It will also limit over-expansive interpretation of the definition, which could

inadvertently include staff where there is a lower risk of abuse of power. This change also helps address points about interaction with Article 8 of the ECHR (right to respect for private and family life) by narrowing the scope of individuals involved to those in positions where an intimate personal relationship has the greatest risk of abuse of power.

388. We have also added further guidance about the definition of 'relevant staff member', through a list of examples of staff who may fall under that definition. We have also noted that a provider could introduce a ban on relationships that considered a wider range of staff to be relevant or allowed for fewer exemptions.

Decision

389. We have decided to implement the following requirement in relation to intimate personal relationships between staff and students.

E6.5 In addition to any other requirements of this condition, in respect of **intimate personal relationships**, the provider must ensure that the single **comprehensive source of information** referred to in paragraph E6.2 provides for one or more steps which could (individually or in combination) make a significant and credible difference in protecting **students** from any actual or potential conflict of interest and/or **abuse of power**.

E6.6. For the purposes of paragraph E6.5:

- a. a **ban on intimate personal relationships** is deemed to be a step which could make a significant and credible difference in protecting **students**; and
- b. a statement made by the provider to the effect that it disapproves of and/or discourages **intimate personal relationships** between **staff** and **students** may contribute to compliance but will not individually be treated as a step which could make a significant and credible difference in protecting **students**.

390. We have decided to define the terms 'ban on intimate personal relationships,' 'intimate personal relationships' and 'relevant staff member' as follows. Other relevant terms remain as defined at consultation.

E6.11

e. '**ban on intimate personal relationships**' means a policy or rule which provides for both of the following elements:

- i. with the exception of **excluded relationships**, any **relevant staff member** is prohibited from having an **intimate personal relationship** with one or more **students**; and
- ii. any breach of such prohibition by a **relevant staff member** would result in the provider taking appropriate steps in line with its usual disciplinary process, including the possibility of the breach resulting in dismissal of the **relevant staff member**.

i. '**excluded relationships**' means any ongoing **intimate personal relationship** that:

- i. existed before the date this condition comes into force and that remains in existence; or
- ii. existed before the date that the **staff** member became a **relevant staff member** in relation to that **student**.

m. '**intimate personal relationship**' means a relationship that involves one or more of the following elements:

- i. physical intimacy including isolated or repeated sexual activity; or
- ii. romantic or emotional intimacy.

p. '**relevant staff member**' means a member of **staff** who has direct or indirect academic responsibilities, or other direct professional responsibilities, in relation to that **student**

391. We have also updated and added further guidance in relation to this requirement. This includes the changes described in the 'our response' section above.

392. This provision of the condition requires a provider to set out, operate and comply with its policies that provides one or more steps which could (individually or in combination) make a significant and credible difference in protecting students from an actual or potential conflict of interest and/or abuse of power. In particular, the condition states that one way of complying with this requirement involves a provider having a ban on intimate personal relationships. The condition also provides an example of what would not constitute compliance – a statement, by itself, disapproving or discouraging intimate personal relationships will not be sufficient for compliance.

393. We consider that this approach enables providers to consider their own context and implement measures that should make a difference for their students. By including the requirement that these measures be set out in a provider's single comprehensive source of information, this approach will also ensure transparency for students and staff.

Proposal G: Implementation

394. Proposal G set out how the OfS would implement the proposed new ongoing condition E6. The intention was that a new condition of registration would be implemented as soon as possible if a final decision was made to proceed.
395. We proposed that any new condition would be published alongside our final decisions and come into effect on a date not less than three months from the date of publishing the final decisions.

Consultation questions

Question 12a: Do you agree or disagree with the proposals for the implementation of any new condition of registration? Please give reasons for your answer.

Question 12b: Do you have any alternative suggestions for the implementation of any new condition of registration that you believe may be more appropriate? If so, please explain and give reasons for your view.

Question 12c: Do you have any comments about the proposed timeframe for implementing any new condition outlines in this consultation? If so, please explain and provide reasons for your view.

Summary of responses relating to Proposal G

396. We received many (176) responses to the questions on the proposed approach to implementation. 54 per cent of the student or student representative bodies responding to these questions supported the approach we proposed, while other responses from this group either disagreed with the timeframe proposed for implementing any new regulatory requirements or suggested a phased approach over an extended timeframe so that providers have an appropriate amount of time to plan, review, resource and engage with students when developing their response to the new requirements.
397. The majority (64 per cent) of responses to these questions were not supportive of the proposal, with 55 per cent expressing concerns with the three-month implementation timeframe proposed. Overall, respondents were doubtful that this timeframe was achievable by providers and suggested that providing three months to implement the condition was too ambitious, particularly for the proposals for training (29 per cent).
398. Other factors referred to by respondents, in terms of requiring additional time to implement the condition, included updating policies or contracts and consultation with trade unions, committees and students. Moreover, several respondents commented that the timeframe proposed for implementing the condition created too much burden on providers with limited capacity to meet this timeline, especially in terms of budgetary considerations and competing priorities. The impact this proposal may have on smaller providers in particular was also raised by some respondents. The consultation responses also suggested that the proposed timeline could potentially compromise the quality of any changes introduced if providers

prioritise compliance with the new regulatory requirements over effectiveness of the approach adopted.

399. 160 respondents replied to the question asking if they had comments on the proposed timelines. Most of these comments focused on the timeline for implementing any new regulatory requirements. The majority of these responses (76 per cent) stated that additional time would be required to meet the requirements proposed and 6 – 12 months was sometimes cited as an appropriate timeframe for providers to properly consider and take appropriate steps to secure compliance with the new requirements. Some 18 per cent of those responding to these questions favoured a staggered or phased approach to implementing a new condition and seven per cent of responses suggested that implementation should be aligned to the beginning of the academic year or that the timeframe should be discussed with providers individually, with their capacity factored into the implementation timeline agreed
400. In terms of further comments, some respondents asked for additional guidance, while others said the proposed approach was too prescriptive (15 per cent). A small number of respondents suggested the proposal contradicted a risk-based approach or that there was a lack of strong evidence for the level of regulatory intervention proposed.
401. The main reason for staggered implementation given by these respondents was that a three-month timeline for implementation was too short for either all or part of the condition. Half of these respondents argued for elements of the condition to be staggered over a 12 month period. Some respondents stated that providing training to both students and staff required longer than three months to implement. Some respondents stated that changes to staff and student contracts, developing capacity and resources, and policy development, provider committee structures, and allowing time for student consultation also required longer than three months to implement.
402. In relation to the impact on students with particular protected characteristics, a small minority raised concerns that the proposed implementation period posed challenges to ensuring the training is accessible, for example, for disabled students.

Our response

403. We have considered the responses to our proposed approach to implementing the new condition of registration and reflected on the concerns identified and the potential unintended consequences of the approach we proposed.
404. In the consultation we explained that our preference was for a new general ongoing condition of registration to come into force on a date not less than three months from the date we published our final decisions. We also said that we had considered a staggered approach to implementing a new condition over a more extended timeline but had provisionally discounted that approach because in our view the evidence about the extent of harassment and sexual misconduct in higher education made a strong case for introducing regulatory requirements as soon as possible to address the risks to students.
405. Our view of the need to implement regulatory requirements as soon as possible has not changed. We think it is in the interests of students to impose a new condition of registration

which facilitates a consistent approach to addressing harassment and sexual misconduct in the sector so that students know that regardless of where they study, there will be robust arrangements in place to support them should they experience or be involved in allegations of harassment or sexual misconduct. We strongly encourage providers to work at pace to ensure they understand our regulatory requirements and take steps necessary to secure compliance.

406. We have decided to adopt a two-staged approach to implementing condition E6, with the provisions relating to restricting the disclosure of information coming into effect on **1 September 2024**. We noted in the consultation document that this provision could be introduced earlier and could function independently from the other requirements in the condition. Although we provisionally discounted this option at the consultation stage, we have decided to implement the new condition in this way because we want to stop the detrimental impact the use of NDAs can have on students as quickly as possible and as we noted in the consultation document, this requirement can function independently from the remaining provisions in condition E6 and we consider that other provisions of this condition may require more time for providers to fully implement.
407. Now that we have considered the responses received in relation to the different requirements of the condition and assessed the measures providers will need to take to secure compliance with those requirements, we have decided to extend the timeframe for introducing most of the new regulatory requirements from the minimum three months we proposed in the consultation. Many respondents suggested that three months was too short and there was a particular concern that this was not sufficient time to properly train staff and students as required and that proceeding with that timeline would create significant burden on all providers and smaller providers specifically, who were likely to have less staff and resource to take the necessary steps in the time proposed.
408. We will allow more than three months for providers to meet the new regulatory requirements. This is because we have carefully reflected on the views expressed by respondents and want to ensure that the effectiveness of the new condition is not undermined by a rush to compliance. We also want to allow sufficient time for providers to engage with their students when developing their approaches so that the measures implemented are appropriate.
409. We reflected on the suggestions to consider a staggered or phased approach to implementing these regulatory requirements. In general, we consider that the interconnected nature of the different provisions means that a single implementation date provides more clarity and transparency for providers and students about the OfS's approach to monitoring compliance with the condition. The additional clarity we have provided in the definitions providers are required to use and the requirements relating to publishing and maintaining a single comprehensive source of information will mean providers need to revisit and where necessary make changes to their existing approaches as the scope of the OfS's regulation in this area is confirmed for the first time in this document. The additional time we have permitted to secure compliance with our regulatory requirements will allow providers time to review their practices and take the necessary actions.
410. We have considered the views of respondents when reviewing the likely resource and capacity requirements of condition E6 in our response to Proposal C in this document and acknowledge that imposing a new condition of registration will place additional burden on

providers. However, we consider this is appropriate to ensure there is a consistent and effective approach to tackling harassment and sexual misconduct in higher education. Providers that have already acted and taken effective steps to address these issues are likely to experience the burden of our new regulatory requirements to a lesser degree than those providers that have not previously taken appropriate steps to address these issues. The additional time we have provided before starting monitoring of compliance will also alleviate some of the burden providers might have experienced if the requirements were introduced more quickly as proposed in the consultation.

411. We carefully considered requiring providers to comply with our requirements during the 2024-25 academic year and noted that allowing sufficient time for providers to properly engage with students in developing their approaches to meeting our requirements would result in the condition taking effect towards the end of the 2024-25 academic year. Implementing the condition towards the end of the academic year may generate unnecessary burden as some students completing or continuing their studies elsewhere may receive training on a provider's approach to tackling harassment and sexual misconduct despite being close to the end of their course. This would potentially also have financial implications for the provider. We want to minimise unnecessary burden and so for this reason have decided that the condition (except for the specific elements on restricting the disclosure of information) will take effect on 1 August 2025 which is the start of the 2025-26 academic year.
412. This will be the point from which the regulatory requirements will apply. However, we encourage providers to take steps towards compliance as soon as possible. Providers may, for example, wish to use some of the time between now and 1 August 2025 to consult and engage widely with students and their staff and may consider phasing their approach by publishing the single comprehensive source of information earlier and then ensuring training is in place after that.

Decision

413. Our decision is to adopt a two-stage approach to implementing Condition E6, the new general ongoing condition of registration focused on harassment and sexual misconduct. The requirements relating to disclosure of information will take effect on 1 September 2024. All other requirements will take effect on **1 August 2025**.
414. Providers should ensure they meet the requirements of the condition by these dates as our monitoring of compliance will start at that point and a failure to do so may result in the OfS taking regulatory action to secure compliance.
415. From 1 September 2024 providers must ensure they meet the requirements of the condition to not include any restricting provisions which prevent or restrict the disclosure of information about an allegation of harassment sexual misconduct.
416. We have provided twelve months from the date of publication of our decisions for the majority of the provisions in the new condition. This is to allow providers to understand and comply with our requirements because we recognise they will need to reflect on our final requirements and may need time to complete additional work to ensure the approaches they adopt are appropriate for their context. The additional time we have permitted also reduces

the likelihood of unintended consequences, such as providers not properly reviewing their policies and poor engagement with students.

417. Providers must meet the requirements of the condition. From 1 August 2025 this means:

- a. To be using definitions for harassment and sexual misconduct which meet the requirements specified in the condition. We consider that this requirement should not increase burden because the definitions of harassment and sexual misconduct largely reflect definitions that are commonly understood and in use in the sector. However, we are also aware that not all providers use these definitions in their policies and so we have allowed sufficient time for these providers to meet this requirement.
- b. To have published and be maintaining a single comprehensive source of information which adheres to the content principles and minimum content requirements specified in the condition. We consider that this provides a reasonable timeframe for providers to consider the requirements, develop and agree an approach to tackling harassment and sexual misconduct and implement the requirements without compromising the quality of the training delivered.
- c. The requirements in respect of relationships between staff and students are agreed and in place.
- d. Sufficient capacity and resources are in place to maintain compliance with the requirements of the condition.
- e. Complying with the requirements of the condition in a manner that is consistent with the freedom of speech principles.

418. Staff must have received training which meets our requirements by this date. Providers will also need to be ready to ensure students are appropriately informed as part of the registration and induction processes that will take place for many students in autumn 2025. While the requirements relating to induction apply only to new students we would encourage providers to consider whether it is beneficial to run these sessions for returning students as well.

419. The implementation dates and our expectations about this as explained above mean that providers will need to work through the next academic year to meet our requirements. These dates do not prevent providers from working to meet our regulatory requirements sooner and we would encourage them to do so where this is possible. The date the condition takes effect means that, in practice, providers are likely to start to meet some of the regulatory requirements before the OfS starts to monitor compliance and students will benefit from the improvements this will make to their experience.

420. Providers that are registered with the OfS after the date of publication of this condition but before the elements of the condition come into effect will have to ensure they meet these requirements from the same dates as currently registered providers. Those registered with the OfS for the first time after 1 August 2025 must meet the requirements of this condition from the date of registration.

421. This would apply where a provider changes its category of registration or applies for registration following a merger, acquisition or other corporate change, and either that provider or the provider it has merged with or acquired, was previously subject to the condition.

Annex A: Condition E6: Harassment and sexual misconduct

General ongoing condition of registration

Scope

E6.1 This condition:

- a. covers subject matter relating to **incidents of harassment** and/or **sexual misconduct** which affect one or more **students** (including the conduct of **staff** towards **students**, and/or the conduct of **students** towards **students**); and
- b. applies in relation to **students** on higher education courses provided in any manner or form by, or on behalf of, a provider (including, but not limited to, circumstances where a provider is responsible only for granting awards for **students** registered with another provider).

Requirements relating to policies and procedures

E6.2 The provider must maintain a single **comprehensive source of information** which sets out policies and procedures on subject matter relating to **incidents of harassment** and **sexual misconduct**, including **intimate personal relationships** between **relevant staff members** and **students**.

E6.3 That single **comprehensive source of information** (and any revisions made to it from time to time) must:

- a. comply at all times with the **minimum content requirements** and the **content principles**;
- b. be published and accessible at all times in a manner which complies with the **prominence principles**; and
- c. allow for users to clearly identify the version of a policy that existed at previous times by making historical versions of policies available for an appropriate period, and being transparent about changes made to their content. This should be done in a manner that is in line with the **prominence principles**.

E6.4 Subject to paragraph E6.8 (which takes precedence over any other requirements of this condition), the provider must operate in accordance with and comply with the single **comprehensive source of information** referred to in paragraph E6.2.

Requirements relating to intimate personal relationships between staff and students

E6.5 In addition to any other requirements of this condition, in respect of **intimate personal relationships**, the provider must ensure that the single **comprehensive source of information** referred to in paragraph E6.2 provides for one or more steps which could (individually or in

combination) make a significant and credible difference in protecting **students** from any actual or potential conflict of interest and/or **abuse of power**.

E6.6 For the purposes of paragraph E6.5

- a. a **ban on intimate personal relationships** is deemed to be a step which could make a significant and credible difference in protecting **students**; and
- b. a statement made by the provider to the effect that it disapproves of and/or discourages **intimate personal relationships** between **staff** and **students** may contribute to compliance but will not individually be treated as a step which could make a significant and credible difference in protecting **students**.

Requirements relating to capacity and resources

E6.7 The provider must have the **capacity and resources** necessary to facilitate compliance with this condition.

Requirements relating to freedom of speech

E6.8 The provider must comply with the requirements of this condition in a manner which is consistent with the **freedom of speech principles**.

E6.9 For the avoidance of doubt, paragraph E6.8 applies in respect of (but is not limited to) decisions taken by the provider about whether or not its policies and procedures will include (or, as the case may be, continue to include) content on matters relating to **harassment** to the extent that such content:

- a. goes further than its obligations under the Equality Act 2010 or any other legal requirement (for example, by adopting or applying the Equality Act 2010 concepts of harassment to conduct related to speech by a student); and
- b. could reasonably be considered capable of having a negative impact on, or having the object or effect of restricting, freedom of speech within the law and/or academic freedom.

Requirements relating to restricting the disclosure of information

E6.10 The provider must not include any **restricting provisions** in any contract formed or varied on or after the date this condition takes effect.

Definitions (which include substantive requirements)

E6.11 For the purposes of this condition E6:

- a. **'abuse of power'** means a situation where a **relevant staff member** exploits a position of power in relation to a **student** so as to apply pressure in a way which:
 - i. may result in the **student** doing something, or refraining from doing something, that they may not have otherwise done; and

- ii. that action or inaction could reasonably result in something that falls within the scope of an **intimate personal relationship**.
- b. **'appropriate support'** means the effective deployment of assistance, including but not limited to:
 - i. support targeted at the needs of **students** involved in any way in an **incident of harassment** and/or **sexual misconduct**, including but not limited to during an investigatory and decision-making process;
 - ii. personal support, including in the form of counselling where appropriate;
 - iii. academic support, including in relation to decisions about attendance, continuation, suspension or cessation of study.
- c. **'appropriately informed to ensure understanding'** includes, but is not limited to ensuring that:
 - i. **students** understand the content of the single **comprehensive source of information** required by paragraph E6.2 when they register at the start of each year of study; and
 - ii. induction sessions for new **students** contain training to ensure they understand behaviour that may constitute **harassment** and/or **sexual misconduct**.
- d. **'appropriately trained'** means **staff** have and maintain:
 - i. up-to-date understanding of the content of the single **comprehensive source of information** required by paragraph E6.2 and all the requirements of this condition;
 - ii. up-to-date understanding of behaviour that may constitute **harassment** and/or **sexual misconduct**;
 - iii. the required knowledge and skills to support **students** who:
 - A. wish to make allegations or complaints about **harassment** and/or **sexual misconduct**;
 - B. have alleged and/or experienced **incidents of harassment** and/or **sexual misconduct**; and
 - C. are the actual or alleged perpetrators of **incidents of harassment** and/or **sexual misconduct**; and
 - iv. the required knowledge and skills to undertake investigations or make decisions in relation to **incidents of harassment** and/or **sexual misconduct**.
- e. **'ban on intimate personal relationships'** means a policy or rule which provides for both of the following elements:

- i. with the exception of **excluded relationships**, any **relevant staff member** is prohibited from having an **intimate personal relationship** with one or more **students**; and
 - ii. any breach of such prohibition by a **relevant staff member** would result in the provider taking appropriate steps in line with its usual disciplinary process, including the possibility of the breach resulting in dismissal of the **relevant staff member**.
- f. **'capacity and resources'** includes, but is not limited to:
- i. the financial resources of the provider;
 - ii. the number, expertise, and experience of the **staff** employed or contracted by the provider; and
 - iii. the resources deployed by the provider to undertake investigations or make decisions in relation to **incidents of harassment** and/or **sexual misconduct**.
- g. **'comprehensive source of information'** means:
- i. a single document or webpage that comprehensively sets out all the information required in order to comply with E6.2 and E6.3; or
 - ii. a single document or webpage that gives a clear summary of the information required by E6.2, complies with E6.3, and links to additional documents that comprehensively set out the remaining relevant detail as required by E6.2 and E6.3. If the provider adopts this approach, the single document or webpage must include a summary of the content to be found by following these links.
- h. **'content principles'** means the following requirements:
- i. the provider may include other additional information and provisions in the single **comprehensive source of information** in addition to the **minimum content requirements**, but such other information and provisions must:
 - A. not contradict, undermine or conflict with the **minimum content requirements**; and
 - B. be subject to a provision which makes it expressly clear that the **minimum content requirements** take precedence over any other information and provisions;
 - ii. the provider must not include information and provisions on subject matter relating to **harassment** and/or **sexual misconduct** (and/or any subject matter of a similar nature to matters covered by those defined terms) in any other documents which could reasonably be considered to contradict, undermine or conflict with the **minimum content requirements**.
- i. **'excluded relationships'** means any ongoing **intimate personal relationship** that:

- i. existed before the date this condition comes into force and that remains in existence; or
 - ii. existed before the date that the **staff** member became a **relevant staff member** in relation to that **student**.
- j. **'freedom of speech principles'** means the following requirements:
- i. irrespective of the scope and extent of any other legal requirements that may apply to the provider, the need for the provider to have particular regard to, and place significant weight on, the importance of freedom of speech within the law, academic freedom and tolerance for controversial views in an educational context or environment, including in premises and situations where educational services, events and debates take place;
 - ii. the need for the provider to apply a rebuttable presumption to the effect that **students** being exposed to any of the following is unlikely to amount to **harassment**:
 - A. the content of higher education course materials, including but not limited to books, videos, sound recordings, and pictures;
 - B. statements made and views expressed by a person as part of teaching, research or discussions about any subject matter which is connected with the content of a higher education course.
- k. **'harassment'** has the meaning given in section 26 of the Equality Act 2010 and section 1 of the Protection from Harassment Act 1997 (in its entirety, and as interpreted by section 7 of the Act).
- l. **'incidents'** includes, but is not limited to, circumstances where:
- i. allegations or complaints are made to the provider about **harassment** and/or **sexual misconduct**; and
 - ii. the provider could reasonably be considered to have grounds for suspecting that **harassment** and/or **sexual misconduct** has taken place or is taking place.
- m. **'intimate personal relationship'** means a relationship that involves one or more of the following elements:
- i. physical intimacy including isolated or repeated sexual activity; or
 - ii. romantic or emotional intimacy.
- n. **'minimum content requirements'** means comprehensive and easy to understand provisions in respect of:
- i. in addition to any other steps required by virtue of the condition, multiple steps which could (individually or in combination) make a significant and credible difference in protecting **students** from behaviour that may amount to

- harassment** and/or **sexual misconduct**, including, but not limited to, steps that may reduce the likelihood of **harassment** and/or **sexual misconduct** taking place;
- ii. the ways in which **students**, **staff** and other persons are able to report behaviour that may amount to **harassment** and/or **sexual misconduct** to the provider;
 - iii. how information received or obtained in connection with **incidents of harassment** and/or **sexual misconduct** will be handled sensitively and used fairly;
 - iv. how the provider ensures that **students** are **appropriately informed to ensure understanding**;
 - v. the **appropriate support** that will be provided to **students** in response to **incidents of harassment** and/or **sexual misconduct**. This includes, but is not limited to, **students** who have alleged and/or experienced **incidents of harassment** and/or **sexual misconduct** and actual or alleged perpetrators;
 - vi. how the provider ensures that **staff** and other persons responsible for receiving information about, investigating, or taking decisions on, matters relating to **incidents of harassment** and/or **sexual misconduct** are **appropriately trained**;
 - vii. how the provider ensures that investigations undertaken and decisions made in respect of **incidents of harassment** and/or **sexual misconduct** are credible, fair and otherwise reflect established principles of natural justice;
 - viii. how the provider ensures that persons directly affected by any decisions made in respect of **incidents of harassment** and/or **sexual misconduct** are directly informed about the decisions and the reasons for them. This includes, but is not limited to, persons who have alleged and/or experienced **incidents of harassment** and/or **sexual misconduct** and actual or alleged perpetrators.
- o. '**prominence principles**' means the following requirements in respect of the single **comprehensive source of information** required by paragraph E6.2:
- i. the single **comprehensive source of information** is published in a prominent position in an area of the provider's website which is easily accessible by **students** and those considering applying to be **students** without the need for any form of password or security check;
 - ii. a clear and easy to understand statement about the existence of the single **comprehensive source of information**, the nature of its content, and how to access it is:
 - A. communicated directly to all **students** and **staff** in writing at least once each calendar year; and

- B. set out in the main documents designed to promote the higher education services available from the provider (for example, any document that is commonly known as a prospectus);
 - C. set out in any documents that are designed to provide a collection of useful information about rules, policies and procedures for **students** and **staff** (for example, any documents that are commonly known as student handbooks and staff handbooks).
- p. **‘relevant staff member’** means a member of **staff** who has direct academic responsibilities, or other direct professional responsibilities, in relation to that **student**.
- q. **‘restricting provisions’** means any provisions that have the object or effect of preventing or restricting any **student** from disclosing information about an allegation of **harassment** and/or **sexual misconduct**, which in any way involves or affects one or more **students**, to any other person.
- r. **‘staff’** includes but is not limited to employees and contractors.
- s. **‘sexual misconduct’** means any unwanted or attempted unwanted conduct of a sexual nature and includes, but is not limited to:
- i. sexual harassment;
 - ii. sexual assault; and
 - iii. rape.
- t. **‘students’** includes, but is not limited to, persons who are registered on a higher education course and, at any point in time within the overall duration of that higher education course, are employed by, or otherwise providing services to, a higher education provider.

Summary

Applies to: all registered providers

Initial or general ongoing condition: general ongoing condition

Legal basis: section 5 of HERA

Guidance

Condition E6.1

1. The reference to higher education courses provided ‘in any manner or form’ includes any higher education course (whether or not that course is recognised for OfS funding purposes, or any other purpose), at any level, and with any volume of learning. This means, for example, any research courses, the study of modules or courses leading to microcredentials, and apprenticeships are included within the scope of this condition. It also includes courses provided face-to-face, by distance learning, or a combination of delivery approaches.
2. This condition applies to any higher education course provided ‘by, or on behalf of, a provider’. This includes higher education provided to all of the students who are registered with a registered provider, taught by a registered provider or studying for an award of a registered provider (or where these services are provided on a registered provider’s behalf). This includes UK-based and non-UK-based students, and courses delivered through partnership arrangements both within the UK and internationally.
3. The reference to ‘including, but not limited to, circumstances where a provider is responsible only for granting awards for students registered with another provider’ means that a provider is required to comply with the provisions of this condition where it is the awarding body for a course, whether or not that provider has any other role in the design or delivery of that course.
4. Where a provider is not the awarding body for a course, this condition applies to a course the provider itself delivers, or which is delivered on its behalf, regardless of the identity of the awarding body, whether or not that awarding body is registered with the OfS, or the nature of any partnership agreement. For the avoidance of doubt, this means for example, that a provider delivering, or allowing another provider to deliver, courses leading to a qualification awarded by Pearson is responsible for compliance with this condition in relation to those courses. Similarly, a provider delivering, or allowing another provider to deliver, courses leading to a qualification awarded by another higher education provider, whether that awarding provider is located in England or elsewhere, is responsible for compliance with this condition in relation to those courses.
5. In practice, these provisions may result in more than one registered provider being responsible for compliance with this condition in relation to the same students.
6. ‘Harassment’ has the meaning given in section 26 of the Equality Act 2010 and section 1 of the Protection from Harassment Act 1997. Section 1 of the Protection from Harassment Act 1997 is interpreted in accordance with section 7 of that Act. This does not create a requirement for a provider to use a criminal standard of proof in its own internal investigations. A provider should make clear to students and staff that any judgements reached as part of an investigation do not constitute a legal ruling on whether or not criminal activity has taken place.
7. These definitions of ‘harassment’ in section 26 of the Equality Act 2010 and section 1 of the Protection from Harassment Act 1997 include ‘objective’ and ‘reasonableness’ tests:
 - a. In the context of section 26 of the Equality Act 2010, in deciding whether conduct has the effect of violating a person’s dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment towards that person, it is necessary to take into

account: the perception of the person who is at the receiving end of the conduct; the other circumstances of the case; and whether it is reasonable for the conduct to have that effect. The last point is important because it introduces an element of objectivity into the test. The perception of the person who is at the receiving end of the conduct is not the only relevant consideration in determining whether the conduct amounts to unlawful harassment.

- b. In the context of section 1 of the Protection from Harassment Act 1997, an offence is committed only if the person knows the conduct amounts to harassment of the other, or a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other person.
8. These objective tests are of particular importance in a higher education context where a provider may face pressure from students or staff, or pressure from external groups, to curtail speech that is lawful but which is perceived as offensive towards a particular person or group of persons.
9. A provider should provide support to students who report harassment and sexual misconduct regardless of whether the provider considers that the incident meets the objective tests.
10. This condition contains a definition of harassment that mirrors the definitions in section 1 of the Protection from Harassment Act 1997 and section 26 of the Equality Act 2010, and extends this to capture harassment by one student of another student. This does not affect a provider's obligations under the Equality Act 2010 and its compliance with those obligations. Instead the wording of section 26 of the Equality Act 2010 is used as a basis for defining the scope of harassment for the purposes of this condition of registration.
11. 'Sexual misconduct' means any unwanted or attempted unwanted conduct of a sexual nature and includes, but is not limited to:
 - a. sexual harassment;
 - b. sexual assault; and
 - c. rape.
12. Where conduct does not fall squarely within the examples in the paragraph above, that conduct may still amount to sexual misconduct under this definition where it is unwanted or attempted unwanted conduct of a sexual nature. The definition therefore includes the most serious behaviour of sexual assault and rape but this is not intended to be an exhaustive list.
13. Harassment and sexual misconduct that is conducted online should be included in a provider's policies. A provider may wish to include further examples of conduct covered by this definition in its policies, provided this does not conflict with the definitions set out in E6.11.
14. An 'incident' of harassment and/or sexual misconduct includes a wide range of circumstances. For example, it includes, but is not limited to, allegations, complaints, suspected behaviour, and formal findings of harassment and/or sexual misconduct. This means that it also includes instances where a formal complaint is not made, or where there is insufficient evidence to progress to disciplinary proceedings.

15. Addressing harassment and sexual misconduct of students carried out by individuals who are neither staff nor students would be consistent with compliance with the condition. A provider may have less influence over harassment and sexual misconduct by individuals who are not students or staff of the provider. Providers should consider what sort of action is appropriate for addressing harassment and sexual misconduct in different contexts. For instance, an incident may occur outside of the provider context where the provider has no, or limited, ability to prevent this. However, the provider should still be able to take significant and credible steps to protect students through supporting those who experience harassment or sexual misconduct even if this takes place outside of the provider context.
16. In order to support good governance and to help demonstrate compliance with this condition, a provider should keep appropriate records of its decisions about the steps it will take to protect students. This should include factors a provider has taken into account when making its decisions.

Condition E6.2, E6.3 and E6.4

17. Condition E6.2 requires a provider to maintain and publish a comprehensive source of information which sets out its policies and procedures on subject matter relating to incidents of harassment and/or sexual misconduct, with which the provider must then comply. This can take the form of a single document or webpage which sets out all relevant policies and procedures, or a single document or webpage which comprehensively sets out a provider's approach and also provides a summary of, and links to, additional documents that comprehensively set out policies and procedures on subject matter relating to harassment and sexual misconduct. The comprehensive source of information must comply with minimum content requirements and content principles. It must be accessible and published in a way that is consistent with the prominence principles.
18. A provider must be transparent about changes it has made to the content of its comprehensive source of information and ensure that historical versions are easily accessible in line with the prominence principles. Information must be accessible for as long as it is relevant to a student in order to protect their interests. For example, this would include the need for individuals involved in an investigatory process to access and store the information for the duration of that process. A provider should consider the need for historical versions of some policies to be available to students to access after they leave their course, because, for example, they may be relevant to a complaint. It may also be helpful to students for a provider to make the information in the single comprehensive source of information downloadable. Transparency about changes to policies allows students to understand what they can expect from their provider and the expectations placed on them. For example, students should be clear how a complaint will be handled if a provider's policies have changed between an incident and the complaint being raised.
19. The requirement for a single comprehensive source of information allows a provider to share information in other forms – it may be beneficial to have simpler or more narrowly framed documents targeted at particular audiences. However, students and other users of a provider's policies should be clear that the single comprehensive source is authoritative and should know how to access it. Other sources of information should not contradict it.
20. In relation to the minimum content requirements, the single comprehensive source of information referred to in condition E6.2 must set out 'multiple steps which could (individually or

in combination) make a significant and credible difference in protecting students from behaviour that may amount to harassment and/or sexual misconduct, including, but not limited to, steps that may reduce the likelihood of harassment and/or sexual misconduct taking place'. Condition E6.4 requires a provider to operate in accordance with, and comply with, its single comprehensive source of information and it is therefore required to take 'multiple steps' as described above in practice.

21. Taking steps that could make a significant and credible difference would lead to a reduction in the prevalence of harassment and/or sexual misconduct and would protect a provider's students from their impact, for example through support for students who have experienced incidents of harassment or sexual misconduct. The steps that may be significant and credible will depend on the context for an individual provider because they will need to be informed by the nature and severity of the issues faced by a provider's students. The minimum content requirements mean that each provider will need to understand its student population and the extent to which its students may be likely to experience harassment or sexual misconduct in order to properly address these issues. A provider with higher prevalence rates of harassment and/or sexual misconduct would be likely to need to take more, and more extensive, steps to make a significant and credible difference in protecting students from behaviour that may amount to harassment and/or sexual misconduct. This would include, but not be limited to, steps that may reduce the likelihood of harassment and/or sexual misconduct taking place.
22. The minimum content requirement to take steps to make a significant and credible difference is in addition to the other steps required by the condition. While a provider is required to meet the other minimum content requirements and provisions of the condition, it is also expected to develop and implement one or more steps to meet this particular minimum content requirement.
23. The following is an illustrative non-exhaustive list of examples of activities a provider could undertake to identify steps which could together make a significant and credible difference in protecting students from behaviour that may amount to harassment and/or sexual misconduct, and/or reducing the likelihood of harassment and/or sexual misconduct taking place:
 - a. Consider the potential needs of different groups of students, including those with needs affected by a student's protected characteristics. This may include, for example, working with students and their representatives when a provider develops its policies and procedures to ensure that they are appropriate for the provider's particular student population. This may include inviting students to provide feedback on the likely significance and credibility of the difference that the steps a provider proposes to take will make in protecting students from behaviour that may amount to harassment and/or sexual misconduct.
 - b. Collect, monitor and publish data where this is likely to inform effective action to protect students from behaviour that may amount to harassment and/or sexual misconduct. This may include data relating to the prevalence of harassment and/or sexual misconduct affecting students. It may also include data about reporting, such as the number and type of incidents reported to the provider, how many of these lead to an investigation, and the outcomes from incidents and investigations. Where data on prevalence and reporting is available a provider should consider whether understanding the relationship between prevalence and reporting rates can improve its understanding of campus culture and the effectiveness of the steps it is taking.

- c. Undertake credible and evidence-based evaluation of the effectiveness of the steps it is taking to make a significant and credible difference in protecting students from behaviour that may amount to harassment and/or sexual misconduct, and reviewing and adjusting its approach as appropriate.
 - d. Consider how to best prevent the use, enforcement and/or reliance on non-disclosure agreements (NDAs) in matters relating to harassment and/or sexual misconduct by third parties, such as placement providers.
24. The examples listed in paragraphs 23a-d are likely to be steps which could assist a provider in making a significant and credible difference in reducing the likelihood of harassment and/or sexual misconduct taking place, and protecting students from behaviour that may amount to harassment and/or sexual misconduct. This is because they place significant emphasis on the need for a provider to engage with its students and their particular experiences of harassment and sexual misconduct in order to determine the steps that may be needed.
25. A provider with higher prevalence rates of harassment and/or sexual misconduct would be likely to need to take more extensive steps to make a significant and credible difference in protecting students from behaviour that may amount to harassment and/or sexual misconduct, including, but not limited to, steps that may reduce the likelihood of harassment and/or sexual misconduct taking place. The OfS would not expect a provider to rely only on data measuring reports of incidents (reporting rates) to determine the prevalence of harassment and sexual misconduct. The provider should also consider other relevant evidence about the prevalence of harassment and sexual misconduct. This is because a provider may have lower reporting rates because it has already taken significant and credible steps to effectively tackle and manage harassment and sexual misconduct, or it may have lower reporting rates because its reporting mechanisms are inadequate or ineffective. Condition E6 requires all providers to ensure they have effective reporting mechanisms in place (see paragraph 30 below).
26. Condition E6.2, and the minimum content requirements, require a provider to set out in a single comprehensive source of information how it will ensure that students are ‘appropriately informed to ensure understanding’ of their provider’s policies and behaviour that may constitute harassment or sexual misconduct. Condition E6.4 requires a provider to operate in accordance with, and comply with, its single comprehensive source of information. A provider is therefore required to ensure that students are appropriately informed to ensure understanding in practice. The following is an illustrative non-exhaustive list of examples of how a provider may demonstrate that it has complied with these requirements:
- a. Mandatory training is delivered for all students.
 - b. Training for potential witnesses of sexual misconduct (often referred to as ‘bystander training’), and training on sexual consent, is delivered.
 - c. Training is underpinned by credible evidence, and its effectiveness is evaluated.
 - d. Training is designed and delivered by persons with credible and demonstrable expertise.
 - e. Training (including that delivered by third parties) is consistent with a provider’s free speech obligations.

27. The OfS expects training to be mandatory rather than optional, but a provider should use its judgement in relation to individual students who may have good reasons for not participating, for example, a student who has previously experienced harassment or sexual misconduct. A provider should actively support students' participation in training. For example, if a provider finds that a significant proportion of its students are asking to be exempted from a particular training session, the provider should consider whether additional support or adjustments to that training would increase participation.
28. Condition E6.2 and the minimum content requirements require a provider to set out in a single comprehensive source of information how it will ensure that staff are 'appropriately trained'. Condition E6.4 requires a provider to operate in accordance with, and comply with, its single comprehensive source of information. A provider is therefore required to ensure that its staff are appropriately trained in practice. The following is an illustrative non-exhaustive list of examples of how a provider may demonstrate that it has complied with these requirements:
- a. Mandatory specialist training is delivered for staff likely to be involved in receiving disclosures about incidents of harassment and/or sexual misconduct, undertaking investigations, and making decisions about disciplinary cases. This training should ensure that relevant staff have a clear understanding of a provider's relevant policies and procedures, which results in appropriate practical application.
 - b. Mandatory training in relation to the freedom of speech principles set out in this condition is delivered to ensure that staff have a proper understanding of relevant free speech rights and responsibilities, the content of the document required by paragraph E6.2 and all the requirements of this condition, including E6.8.
 - c. Training is underpinned by credible evidence, and its effectiveness evaluated.
 - d. Training is designed and delivered by persons with credible and demonstrable expertise.
 - e. Training (including that delivered by third parties) is consistent with a provider's free speech obligations.
29. Condition E6.2 and the minimum content requirements require a provider to set out in a single comprehensive source of information how it will ensure that students are provided with 'appropriate support' when they wish to make allegations or complaints, have alleged and/or experienced harassment or sexual misconduct, or are actual or alleged perpetrators. Condition E6.4 requires a provider to operate in accordance with, and comply with, its single comprehensive source of information. A provider is therefore required to ensure that 'appropriate support' is provided in practice. A provider may determine the approach it takes to making such support available to students, for example, by delivering its own support services, commissioning support from other organisations, or making appropriate and effective referrals to other service providers. The following is an illustrative non-exhaustive list of examples of how a provider may demonstrate that it has complied with these requirements:
- a. Support is targeted at the needs of students who wish to make allegations or complaints about harassment and/or sexual misconduct, including, but not limited to during any investigatory and decision-making process.

- b. Support is targeted at the needs of students who have alleged and/or experienced incidents of harassment and/or sexual misconduct, including, but not limited to during any investigatory and decision-making process.
- c. Support is targeted at the needs of students who are the actual or alleged perpetrators of incidents of harassment and/or sexual misconduct, including, but not limited to during any investigatory and decision-making process.
- d. Students who have alleged and/or experienced sexual misconduct are signposted to sources of specialist personal support, such as counselling or to a Sexual Assault Referral Centre, where appropriate.
- e. Support is available to, and appropriate for, students with different needs, including those with needs affected by a student's protected characteristics.
- f. Support is provided at all relevant times as appropriate, for example, before any formal investigation, for the duration of an investigation, and following its outcome. This includes for students who have alleged and/or experienced harassment or sexual misconduct, actual or alleged perpetrators and witnesses.
- g. Students who have alleged and/or experienced harassment or sexual misconduct, witnesses, and/or alleged or actual perpetrators are signposted to a provider's relevant academic support, such as processes for extenuating circumstances or support with assessment.
- h. Support is provided to ensure the continued academic engagement of any student involved in an investigation, or a disciplinary or similar process, where a student wishes to continue studying. It may be appropriate to make changes to academic and/or assessment arrangements for a student who has alleged and/or experienced harassment or sexual misconduct, an alleged perpetrator or a witness, during or following such a process.
- i. Support is available to students who have alleged and/or experienced harassment or sexual misconduct, whether or not they decide to make a formal report about an incident
- j. Support is available to students who have alleged and/or experienced harassment or sexual misconduct, whether or not the incident has occurred on a provider's premises or in connection with a student's registration.

30. Condition E6.2 and the minimum content requirements require a provider to set out in a single comprehensive source of information how students, staff and other persons are able to report behaviour that may amount to harassment and/or sexual misconduct to the provider. Condition E6.4 requires a provider to operate in accordance with, and comply with, its single comprehensive source of information. A provider is therefore required to ensure that it has appropriate reporting mechanisms in practice. The following is an illustrative non-exhaustive list of examples of how a provider may demonstrate that it has complied with these requirements:

- a. Clear information is published about where and how a report can be made.

- b. A range of different mechanisms is provided for making a report, including in person and online.
- c. Reports are accepted on behalf of students who have alleged and/or experienced harassment or sexual misconduct, or on behalf of witnesses, from third parties, for example third party reporting centres.
- d. Any mechanisms intended to support anonymous reporting of allegations of harassment are implemented and explained to students and staff in a way consistent with the freedom of speech principles in condition E6 to ensure that they do not have, and do not risk having, a negative effect on freedom of speech.
- e. Any unnecessary actual or perceived barriers that may make students who have alleged and/or experienced harassment or sexual misconduct, or witnesses to incidents of harassment or sexual misconduct, less likely to make a report are removed.

31. Condition E6.2 and the minimum content requirements require a provider to set out in a single comprehensive source of information how information received or obtained in connection with incidents of harassment and/or sexual misconduct will be handled sensitively and used fairly. Condition E6.4 requires a provider to operate in accordance with, and comply with, its single comprehensive source of information. A provider is therefore required to ensure that information is handled sensitively and used fairly in practice. The following is an illustrative non-exhaustive list of examples of how a provider may demonstrate that it has complied with these requirements:

- a. Information is collected sensitively and treated with appropriate confidentiality, irrespective of the mechanism used to make a report or disclose information, for example, in person or online.
- b. Information is handled on the basis set out in data protection legislation.
- c. Students understand how information they disclose may be used, for example during a disciplinary process for a student or a member of staff.

32. Condition E6.2 and the minimum content requirements require a provider to set out in a single comprehensive source of information how it will ensure that investigations undertaken and decisions made in respect of incidents of harassment and/or sexual misconduct are credible, fair and otherwise reflect established principles of natural justice. Condition E6.4 requires a provider to operate in accordance with, and comply with, its single comprehensive source of information. A provider is therefore required to ensure that its investigation and decision-making processes are credible, fair and otherwise reflect established principles of natural justice in practice. The following is an illustrative non-exhaustive list of examples of how a provider may demonstrate that it has complied with these requirements:

- a. The policy which sets out the circumstances in which a provider would initiate an investigatory or decision-making process against a student or a member of staff, is clear and easy to understand. The policy also explains how any process would address allegations that may also constitute a criminal offence.

- b. Information about various matters, including but not limited to the following, is clear, accessible and explicit:
 - i. a provider's investigatory process
 - ii. a provider's decision-making process
 - iii. timescales for investigation and decision-making, including factors which may affect timescales
 - iv. the range of possible actions that may result from a provider's investigation and decision-making process
 - v. any appeal mechanism in relation to a provider's decisions and how this can be triggered.
- c. Investigatory and disciplinary processes are free from any reasonable perception of bias.

33. Condition E6.2 and the minimum content requirements require a provider to set out in a single comprehensive source of information how it will ensure that persons directly affected by any decisions made in respect of incidents of harassment and/or sexual misconduct (including, but not limited to, those who have alleged and/or experienced incidents of harassment or sexual misconduct and actual or alleged perpetrators) are directly informed about the decisions and the reasons for them. Condition E6.4 requires a provider to operate in accordance with, and comply with, its single comprehensive source of information. A provider is therefore required to ensure that relevant individuals are directly informed in practice. The following is an illustrative non-exhaustive list of how a provider may demonstrate that it has complied with these requirements:

- a. Information about various matters, including but not limited to the following, is clear, accessible and explicit:
 - i. how all relevant parties affected by any decisions made by a provider will be identified
 - ii. the information that will be shared with each relevant party, and the timing of this.
- b. Those directly affected by any decisions made – those who have alleged and/or experienced incidents of harassment or sexual misconduct, witnesses, and/or alleged or actual perpetrators – are in practice provided with sufficient information to understand the provider's decisions and the reasons for them.

34. In relation to all of the content of its single comprehensive source of information, a provider must ensure that its approach is set out in 'comprehensive and easy to understand provisions'. This means, for example, that each provision must be clear in its own right, and not require a detailed knowledge of the provider's other policies or processes.

35. The content principles explain that a provider may include other information and provisions in its single comprehensive source of information. However, any such additions must not contradict, undermine or conflict with the minimum content requirements, and must include a

provision which makes it expressly clear that the minimum content requirements take precedence over any other information and provisions. Further, such additions must not include information and provisions on subject matter relating to harassment and/or sexual misconduct (and/or any subject matter of a similar nature to matters covered by those defined terms) which could reasonably be considered to contradict, undermine or conflict with the minimum content requirements. It should be noted that under E6.8 a provider will also need to comply with this requirement in a manner which is consistent with the freedom of speech principles.

36. The nature of a provider's students and courses may mean that it needs to maintain more than one policy relating to harassment and sexual misconduct. If different policies apply to different groups of students this should be clear and individual students should be able to easily identify which policies apply to them. The following is an illustrative non-exhaustive list of examples in this context:
- a. Legal safeguarding obligations that apply to under-18s and 'adults at risk' receiving higher education.
 - b. Students studying on a regulated or accredited course may be subject to additional safeguarding or fitness-to-practice requirements.
 - c. Postgraduate students may have obligations to a research or funding body which may have differing policies or procedures as a condition of funding, support, or access to resources.
37. The prominence principles ensure that a provider's single comprehensive source of information is prominent and accessible for current students and potential future students. They also require a provider to ensure that awareness of its single comprehensive source of information is raised with students and staff through direct communication and by references in other documents, such as a prospectus or student or staff handbook.

Condition E6.5 and E6.6

38. A provider identifying steps it will take to comply with this requirement should consider the different forms of abuse of power that can take place within intimate personal relationships between staff and students and how the steps it introduces will be effective in addressing these. The following is an illustrative and non-exhaustive list of examples of detrimental treatment and favourable treatment of students that may occur in the context of intimate personal relationships between relevant staff members and students:
- a. Not receiving a positive review or reference, or receiving a negative review or reference.
 - b. Unfavourable treatment in academic assessments, for example, less access to support or feedback, less opportunity for extensions, lower grades or marks.
 - c. Not receiving funding for research.
 - d. Restricting access to resources.
 - e. Restricting participation in aspects of a student's education.

- f. Receiving a positive review or reference.
- g. Favourable treatment on academic assessments, for example greater access to support or feedback, more opportunity for extensions, higher grades or marks.
- h. Being promised access to funding and resources.
- i. Being promised introductions to others who could advance their academic or professional career.

39. The requirements in E6.5 are not intended to prohibit staff from discharging their professional, pastoral or academic responsibilities within appropriate professional boundaries. For example, a staff member may necessarily have physical contact with a student as part of their academic role (e.g. modelling appropriate physiotherapy techniques) or a personal connection with a student as part of their academic or professional role (for example, as a personal tutor or as a counsellor). The definition of 'intimate personal relationship' in E6.11 includes reference to 'emotional intimacy' and this should not prevent a member of staff engaging compassionately and considerately with a student on a professional basis. This may be particularly important when engaging with students in distress. In its policy, a provider should be clear about its expectations in this area. Equally, a provider should be aware that 'emotional intimacy' may be formed through grooming behaviours, which could result in, or constitute, abuse of power.

40. As specified in E6.6, a provider may meet the requirement in E6.5 by prohibiting intimate personal relationships between relevant staff members and students. Alternatively, it may identify other steps to comply with this requirement. The following is an illustrative and non-exhaustive list of steps a provider could take as part of a package of measures to make a significant and credible difference in protecting students from any actual or potential conflict of interest and/or abuse of power:

- a. Explicitly discouraging intimate personal relationships between relevant staff members and students in its messaging to students and staff.
- b. Raising awareness among students of behaviours which may amount to abuse of power, coercion, or sexual and/or romantic advances in the context of intimate personal relationships.
- c. Empowering students to refuse and report inappropriate behaviours from staff and providing information about how they can access support.
- d. Ensuring staff are appropriately trained about appropriate professional boundaries and the likelihood of harassment and sexual misconduct occurring within such relationships.

41. A provider may choose to implement a ban on intimate personal relationships that allows for exemptions, or may choose not to implement a ban at all. In either of these cases, intimate personal relationships between relevant staff and students may be permitted. If so, the provider should seek to manage and address any actual or potential conflict of interest, or abuse of power, as a result of the relationship. The following is an illustrative and non-exhaustive list of examples of the range of steps a provider may take to manage and address any actual or potential conflict of interest or abuse of power in intimate personal relationships:

- a. Requiring staff to disclose intimate personal relationships with students when they occur, and maintaining a record of these.
- b. Managing the academic and/or professional interaction between a relevant staff member and a student with whom the relevant staff member has an intimate personal relationship, in order to ensure the student's academic, employment and pastoral interests are not compromised. For example:
 - i. Ensuring a student can report any harassment or sexual misconduct through a mechanism that does not involve the member of staff with whom they have an intimate personal relationship.
 - ii. Ensuring a student is not at risk of adverse academic results, or negative references due to the actual or potential conflict of interest or abuse of power, by putting in place a mechanism that ensures that the staff member cannot influence these, or appear to influence them.
- c. Managing the academic or professional interaction between a relevant staff member and a student with whom the staff member has an intimate personal relationship, in order to ensure that there is confidence these are being approached fairly for all students. For example:
 - i. Ensuring there is no potential or actual unfair advantage to a student, for example in assessment, references or academic opportunities, due to their intimate personal relationship with a staff member.
 - ii. Amending the responsibilities of the staff member so they no longer meet the definition of a 'relevant staff member'.

42. When taking steps to manage actual or potential conflicts of interest and/or abuse of power that arise in an existing intimate personal relationship, a provider should take steps to ensure that a student involved in a relationship is not disadvantaged.

43. The following steps may assist a provider in identifying steps to take to meet the requirements of E6.5:

- a. Gathering and analysing evidence of the prevalence of relationships between staff and students at the provider.
- b. Assessing the volume, seriousness and nature of complaints made about relationships between staff and students.
- c. Assessing the risk of harassment and/or sexual misconduct occurring as a result of the actual or potential abuse of power and conflicts of interest that can arise from relationships between staff and students.
- d. Consulting with students to ensure that their views, interests and needs are taken into account in determining the provider's approach to relationships between staff and students.

44. The OfS expects a provider to regularly review the efficacy and appropriateness of its approach to relationships between staff and students and amend that approach as necessary, in order to comply with condition E6.5. The regularity of such reviews is a matter for each provider, but should take place when circumstances change, for example, if there is an increase in relevant complaints by students.
45. In communicating its policy on relationships between staff and students, a provider should make clear to students that they can report and seek support for harassment or sexual misconduct that occurs within a relationship with a staff member, regardless of whether that relationship is permitted under the policy. A provider should also make clear to students that they would not be penalised by the provider for participating in a relationship with a relevant staff member, and that they would be protected from retaliation by the staff member if they reported harassment or sexual misconduct.
46. If a provider chooses to ban relationships between staff and students, the condition requires the provider to take appropriate steps in line with its usual disciplinary process if a relevant staff member breaches that ban. This includes the possibility of a breach resulting in dismissal of the relevant staff member. The consequences of breaching any ban are likely to be proportionate to the seriousness of the conduct that has taken place, to guard against the risk of future conflicts of interest or abuse of power that can arise in intimate personal relationships between relevant staff members and students and to discourage such relationships.
47. When implementing its disciplinary and conflict of interest processes, a provider may wish to consider circumstances in which the staff and/or student involved in an intimate personal relationship fear personal persecution, incrimination or other harmful consequences due to culturally taboo or illegal activity.
48. Abuse of power is defined in the condition. For the purposes of that definition, something falls within the scope of an intimate personal relationship, where it amounts to:
- a. physical intimacy, including isolated or repeated sexual activity; and/or
 - b. romantic or emotional intimacy.
49. In relation to this condition, a 'relevant staff member' is intended to capture any member of staff, employed or contracted by a provider, who has direct academic responsibilities or other direct professional responsibilities, for a student. The reference to 'academic responsibilities' includes, but is not limited to, teaching, supervision and assessment. The reference to 'other direct professional responsibilities' is intended to capture staff with a direct professional or pastoral responsibility for a student, including but not limited to mental health advisers, staff operating student complaint processes and security personnel.
50. Cleaning or catering staff would not normally be captured by the definition of a 'relevant staff member' unless they have direct professional responsibilities for a student. Where an individual is a student at a particular provider and also a staff member at that same provider (for example, a research student who is tutoring or teaching undergraduate students, or acting in a supervisory capacity), that individual is considered to be a student and could also be captured by the definition of a 'relevant staff member' where they have direct academic responsibility or other direct professional responsibility for a student.

51. The following sets out an illustrative and non-exhaustive list of the types of staff members that are expected to be captured by the definition of 'relevant staff member':

- a. Teaching staff, such as lecturers or graduate teaching assistants.
- b. Dissertation or project supervisors for taught postgraduate students or research students.
- c. Personal tutors and pastoral support staff.
- d. Senior members of staff with responsibility or oversight of wider institutional strategy, processes and delivery, for example, vice-chancellors.
- e. Security staff.

52. A provider may choose to introduce a ban that goes further than set out in the definitions in condition E6, for example by applying its ban to a wider group of staff than those the condition identifies as relevant staff, or by banning relationships even where these are pre-existing. Provided that all relationships prohibited by the definition of a ban set out in the condition remain prohibited by a provider's policy, the OfS would continue to deem it to have satisfied the condition with a more extensive ban.

Condition E6.7

53. Condition E6.7 requires a provider to have the capacity and resources necessary to comply with condition E6.

54. A provider with higher prevalence rates of harassment and/or sexual misconduct would be expected to ensure that it has more capacity, and to deploy more resources, to comply with this condition than a provider with lower prevalence rates.

55. A provider may determine the approach it takes to ensuring it has the capacity and resources to comply with this condition, for example, by sharing services with other organisations and/or providers. Whatever approach a provider decides to take, it remains responsible for ensuring compliance with all of the provisions of this condition.

Condition E6.8 and E6.9

56. The requirement of condition E6.8 and the freedom of speech principles are concerned with the importance of free speech, and ensuring that it is a fundamental consideration when a provider produces policies and processes for dealing with harassment and sexual misconduct and when it takes action under those policies to comply with this condition.

57. The 'freedom of speech principles' in the condition include a 'rebuttable presumption' that requires a provider to assume that the exposure of students to course materials, and statements made and views expressed by a person as part of teaching, research or discussions about any subject matter that is connected with the content of a higher education course, are unlikely to constitute 'harassment', unless otherwise demonstrated that these matters do in fact amount to harassment.

58. A provider is not required to take a step that interferes with lawful speech in order to meet the requirements of the condition:

- a. The OfS recognises that the Equality Act 2010 does not currently give rise to legal obligations for a higher education provider to address conduct by a student that amounts to harassment.
- b. One of the aims of this condition is to create obligations for higher education providers in respect of dealing with harassment that goes further than the existing law, but only in so far as that does not involve doing things that could reasonably be considered to have the object or effect of restricting freedom of speech within the law or academic freedom.
- c. A provider will need to carefully consider its freedom of speech obligations and ensure that it has particular regard to, and places significant weight on, those obligations when creating and applying policies and procedures that are designed to help protect students from harassment by other students.
- d. Freedom of speech obligations should not be considered to be a barrier to creating or applying policies and procedures in respect of types of conduct that may amount to harassment unless such policies and procedures could reasonably be considered to have the object or effect of restricting freedom of speech within the law and/or academic freedom.

59. The following is an illustrative non-exhaustive list of examples of actions a provider could take that are less likely to have a negative impact on free speech within the law:

- a. Graffiti, images or insignia that stir up racial hatred are removed promptly, with support such as access to counselling, mental health or peer support groups provided to students affected. Students are informed of the actions taken and an investigation conducted to identify the perpetrators. The provider's disciplinary process is followed with appropriate consequences imposed at the conclusion of the investigation, in line with relevant policies.
- b. Verbal or physical threats of violence are investigated quickly. Support is provided to students affected and, if appropriate, interim measures are put in place to protect students while an investigation is undertaken. Action is taken to identify the perpetrators with appropriate consequences imposed once disciplinary processes have concluded.

Condition E6.10

60. Condition E6.10 prohibits a provider from restricting the ability of a student to disclose information about an allegation of harassment and/or sexual misconduct. Such restrictions are often written into contractual documents referred to as 'non-disclosure agreements' or 'NDAs'. This provision means that a provider cannot impose any provision that would prevent or restrict any student from disclosing information about an allegation of harassment and/or sexual misconduct which involves or affects one or more students.
61. A provider must not, therefore, include such a restriction in any contract that applies to students and is formed or varied from the date this requirement comes into effect.
62. Although this provision does not apply to other persons, providers should consider the wider requirements of this condition in applying such restrictions to other persons such as staff, and

not to inhibit discussion of these issues that might support those who have experienced harassment or sexual misconduct, or allow issues to be aired and properly addressed.

Information gathering, assessment of evidence and enforcement

63. The OfS will use its general risk-based approach to monitoring as set out in the regulatory framework.
64. Where monitoring activity produces intelligence or evidence that suggests there may be compliance concerns for an individual provider, the OfS may adopt one or more of the following approaches in any order:
 - a. Engage with a provider to ensure it is aware of the issues.
 - b. Gather further information it considers relevant to the scope of the potential concerns, from a provider or from elsewhere on a voluntary basis, to facilitate an assessment of whether there is, or has been, a breach of one or more conditions.
 - c. Use its investigatory powers where that is considered appropriate for any reason.
65. Where the OfS considers it appropriate to use its investigatory powers it may conduct an investigation itself, or may ask another appropriate body or individual, to gather further information it considers relevant.
66. Having gathered further relevant information as necessary, the OfS will reach a view about a provider's previous and ongoing compliance with the condition. Where the OfS takes the view that there is or has been a breach of the condition it will write to the provider to set out the reasons for its provisional decision and set out the evidence it has used to reach this view. The provider is able to submit any further information it considers relevant in a representations process and the OfS will consider this before reaching a final decision.
67. Where the OfS has decided that there is, or has been, a breach of this condition, it will consider the use of the full range of its enforcement powers. This includes the imposition of a monetary penalty, suspension of elements of a provider's registration, for example its access to student support funding or OfS public grant funding, or deregistration. The OfS will follow any statutory consultation process as it takes enforcement action.
68. Where the OfS considers there to be an increased risk of a breach or a relevant wider regulatory concern, it may impose one or more specific ongoing conditions of registration. This may include, but not be limited to, requiring a provider to conduct a prevalence survey of its whole student population to the OfS's specification and publish the outcomes of that survey. The OfS will also consider whether additional monitoring requirements are appropriate, for example, a requirement to report additional matters as reportable events.

Annex B: Matters to which we have had regard in reaching our decision

General duties

1. In formulating the decisions that we have set out in this document, we have had regard to the OfS's general duties as set out in section 2(1) of the Higher Education and Research Act 2017 (HERA). We are required to have regard to:
 - a. The need to protect the institutional autonomy of English higher education providers.
 - b. The need to promote quality, and greater choice and opportunities for students, in the provision of higher education by English higher education providers.
 - c. The need to encourage competition between English higher education providers in connection with the provision of higher education where that competition is in the interests of students and employers, while also having regard to the benefits for students and employers resulting from collaboration between such providers.
 - d. The need to promote value for money in the provision of higher education by English higher education providers.
 - e. The need to promote equality of opportunity in connection with access to and participation in higher education provided by English higher education providers.
 - f. The need to use the OfS's resources in an efficient, effective and economic way; and
 - g. So far as relevant, the principles of best regulatory practice, including the principles that regulatory activities should be:
 - i. transparent, accountable, proportionate and consistent, and
 - ii. targeted only at cases in which action is needed.
2. We consider that the approach we have decided to adopt in implementing a condition of registration in relation to harassment and sexual misconduct is particularly relevant to general duties (a), (b), (c), (e), and (g) which relate to: institutional autonomy, quality, choice and opportunities for students; competition; equality of opportunity; and best regulatory practice.
3. In making our decisions, we have placed significant weight on (e), our general duty relating to equality of opportunity in connection with access to, and participation in, higher education provided by English higher education providers.
4. We have placed weight on this general duty in making decisions to introduce a new condition of registration. This is because we consider that all students should be protected from incidents of harassment and sexual misconduct and effectively supported when incidents do occur, as any experience of harassment or sexual misconduct is likely to have a negative effect on a student's ability to fully participate in higher education and to succeed on their course and in their careers. The evidence presented in Annex E of our consultation and

Annex D of this document indicates that harassment and sexual misconduct disproportionately affects students from groups that are underrepresented in English higher education, including but not limited to students with relevant protected characteristics of disability, sexual orientation, sex, gender reassignment, race and religion or belief. We consider that the decision to impose a new condition of registration to address harassment and sexual misconduct will require providers to improve their policies, resulting in fewer instances of harassment and sexual misconduct faced by students as well as ensuring appropriate support is provided where incidents do occur. This will reduce the risk that these instances cause disruptions in students' academic journeys which may affect continuation, completion, and their overall academic experience. Requiring providers to have a single comprehensive source of information may also encourage underrepresented groups to access higher education by providing reassurance that providers are taking meaningful steps to address harassment and sexual misconduct. Similarly, the knowledge that all providers are bound by regulatory requirements in this area may be reassuring to students, including those from underrepresented groups, about choosing to enter English higher education.

5. The OfS is required to have regard to general duty (a) the need to protect institutional autonomy. It does not, however, have an absolute obligation to protect the autonomy of providers. We have carefully considered general duty (a), institutional autonomy. Having fully explored self-regulation of harassment and sexual misconduct, including through our Catalyst funding and subsequently our voluntary statement of expectations, we concluded that this approach did not achieve our intended goals, hence the proposal to impose a new condition of registration. Our decision to implement a new condition of registration may result in a provider being required to act in a way it may not otherwise have chosen. Having decided to impose a condition for all providers, we have deliberately attached significant weight to institutional autonomy in the overall design of our approach to that condition, including how providers meet the minimum content requirements, how they deliver training to students and staff, and their approach to relationships between staff and students. We have not prescribed specific resource requirements related to the condition. It will be for individual higher education providers to decide how best to address harassment and sexual misconduct within their own provider's context in order to bring about the most effective change, provided that they do so in a way that complies with the new condition. The need to protect institutional autonomy also includes protecting academic freedom and we have demonstrated consideration of this in our inclusion of requirements relating to freedom of speech and additions included since our consultation.
6. We have considered general duty (b), quality, choice and opportunity, insofar as equality of opportunity and quality and standards are closely connected and mutually reinforcing. A student's experience of harassment or sexual misconduct that negatively affects their outcomes and experience, will not lead to a high quality education. Our decision to introduce a new condition of registration will promote a greater degree of consistency across higher education providers in their approach to harassment and sexual misconduct, with all required to meet a shared standard. We consider that this will create more choice and opportunities for students who are particularly affected or concerned about these matters because it will give them greater confidence that they can attend any registered provider and these protections will be in place. Our decision to require a provider to create a single comprehensive source of information setting out its approach to tackling harassment and sexual misconduct is designed to promote informed choice. It will ensure that students and applicants fully

understand the approach that an individual provider is taking to address harassment and/or sexual misconduct on its campuses and as it might affect any of its students.

7. We are required to have regard to duty (c) the need to encourage competition, where that competition is in the interests of students and employers. We consider that having prominently published policies on these matters will allow students to compare providers' policies and encourage providers to engage with their students to ensure they have robust policies which may attract incoming students. In addition, we have placed weight on our general duty relating to competition when proposing that this should be an ongoing condition and not an initial condition of registration. This is because we are seeking to limit the burden on new providers applying to register with the OfS, while still protecting students from harassment and sexual misconduct once a provider is registered.
8. We are required to have regard to duty (g) the principles of best regulatory practice – including the principles that regulatory activities should be – (i) transparent, accountable, proportionate and consistent, and (ii) targeted only at cases in which action is needed. We have given particular consideration to this duty when ensuring the scope and requirements of the condition can be applied consistently across providers. We have further refined definitions used in the condition based on consultation responses and provided detailed guidance to aid transparency and consistency. We consider that implementing an ongoing condition on harassment and sexual misconduct represents a proportionate response to an issue that puts the wellbeing, safety and opportunities of students to succeed in higher education at risk. We consider that some providers will already be meeting some of the requirements set out in the condition and providers who are furthest away from the position in our previous voluntary statement of expectations will face the greatest burden. This additional burden is appropriate in the interests of protecting students.
9. We are required to have due regard to duty (f) the need to use the OfS's resources in an efficient, effective and economic way. The resources allocated to implementing a new condition of registration on harassment and sexual misconduct represent the gravity of this issue for higher education students in England. We have approached this condition in a way which does not require extensive approval or oversight by the OfS of providers' policies and process, or the specific actions they take to address harassment and sexual misconduct.

Public Sector Equality Duty

10. We have had due regard to our obligations under the PSED in the Equality Act 2010. This requires the OfS to have due regard to eliminating unlawful discrimination, advancing equality of opportunity and to fostering good relations between groups who share protected characteristics and those who do not.
11. We have engaged with equality considerations throughout the development of this condition. As we set out in sections on the various proposals, we have considered the feedback from consultation respondents regarding the potential impact of the proposals on individuals with protected characteristics and applied appropriate mitigations where appropriate.
12. In response to requests that we undertake and publish an equality impact assessment for condition E6, we have engaged carefully with matters relating to equality throughout our policy development and decision-making process – in the consultation proposals and in the

development of our final regulatory approach. We have considered the anticipated impact of the condition based on the available feedback and evidence.

13. We have concluded overall that the introduction of a new condition of registration on harassment and sexual misconduct will have a positive impact on individuals with relevant protected characteristics. The aim of the introduction of an ongoing condition of regulation is to improve protection for students against harassment and sexual misconduct. We have identified substantial evidence which shows that students with relevant protected characteristics are disproportionately affected by these issues. Therefore:
 - a. We expect this decision to have a positive impact on eliminating harassment, discrimination and victimisation for students with relevant protected characteristics as the policy intent of condition E6 aligns directly with this aim. It ensures higher education providers take steps to prevent and address harassment and sexual misconduct including but not limited to ensuring students and staff are appropriately informed of policies and that students receive adequate support when incidents of harassment and/or sexual misconduct do occur. All providers will be expected to work to meet the requirements in our condition. Providers that have not previously taken steps to meet the voluntary principles in our statement of expectations will be expected to take the appropriate steps to ensure they are affording protections for students against harassment and sexual misconduct. We expect compliance with this condition would result in both a reduction in incidents of harassment and improved support for students.
 - b. We expect this decision to have a positive impact on advancing equality of opportunity for students with relevant protected characteristics. Incidents of harassment and sexual misconduct can have a detrimental effect on students' ability to succeed in higher education. Providers that do not have appropriate policies in place to protect students may also deter students with relevant protected characteristics from attending higher education due to fear that they will not be protected. A set of standards for protections from harassment and sexual misconduct will improve student safety, health and wellbeing which, in turn, will ensure students have equal opportunities to access, progress and succeed in higher education. Ensuring adequate support for those who experience harassment and sexual misconduct will minimise the risk that incidents of harassment and sexual misconduct result in barriers to students' success and progression in higher education.
 - c. We expect this decision to have a positive impact on fostering good relations because preventing and addressing harassment and sexual misconduct will enable providers to support appropriate learning environments for all students while instilling student trust in their institutions. The condition should result in higher education providers taking specific actions to ensure harassment and sexual misconduct does not occur. Preventative actions may include those which foster good relations between groups who share protected characteristics and those who do not. Reducing harassment and sexual misconduct should also reduce negative interactions in higher education settings between groups who share protected characteristics and those who do not. We expect that providers will carefully consider how to discharge their obligations relating to freedom of speech while paying due regard to eliminating harassment and

fostering good relations. This could lead to improvements across the sector regarding approaches to these issues.

Guidance from the Secretary of State

14. We have had regard to guidance issued to the OfS by the Secretary of State under section 2(3) of HERA, and specifically the guidance issued in March 2022 which set out the government's view that leaders of higher education providers should 'prioritise a zero-tolerance culture to all harassment and sexual assault and improve the systems for reporting incidents'.³⁹
15. We consider the following aspects of that guidance to be of some relevance to our approach to regulating harassment and sexual misconduct:

Preventing and addressing harassment and sexual misconduct

16. 'We welcome the OfS's publication of the statement of expectations on sexual harassment and misconduct last spring and follow up work since then. We understand that the OfS will continue its work to evaluate the implementation of the statement of expectations but, in our view, the OfS should include this in a condition of registration as soon as possible'.

Freedom of speech

17. 'Freedom of speech and academic freedom are fundamental principles which underpin the HE sector. Without action to counter attempts to discourage or even silence unpopular views, intellectual life on campus for both staff and students may be unfairly narrowed or diminished'
18. 'Although the Higher Education (Freedom of Speech) Bill will strengthen protections in this area, it is important that the OfS effectively enforces the current relevant conditions in the interim. Under the Bill, the OfS will have an expanded role in ensuring that these values are upheld across the sector, including through the appointment of a new Director for Freedom of Speech and Academic Freedom.'

Reducing regulatory burden

19. 'We welcome efforts of the OfS to date in identifying ways to ensure that regulatory burden is proportionate, and we see this work as a way of supporting the sector to focus on high quality teaching and learning...In particular, we would like the OfS to consider ways in which it can work with the sector to communicate more clearly its expectations'.
20. We have had regard to this guidance as we decided to introduce a new ongoing condition of registration. Underpinning the condition of registration on harassment and sexual misconduct are requirements for a provider to addressing harassment and sexual misconduct while continuing to comply with its free speech obligations. We have clearly communicated our requirements and see this condition as a way of ensuring students can receive a high quality learning experience that is not impeded by experiences of harassment or sexual misconduct.

³⁹ See www.officeforstudents.org.uk/media/be054f0b-696a-41fc-8f50-218eb0e3dcab/ofs-strategic-guidance-20220331_amend.pdf.

The Regulators' Code

21. We have had regard to the Regulators' Code.
22. We have had regard to section 1, which discusses the need for regulators to carry out their activities in a way that supports those they regulate to comply and grow. We have considered that a new condition of registration would impose burden on all providers, and particularly providers that have not engaged fully with our voluntary statement of expectations. However, due to the significance of harassment and sexual misconduct we consider that any increase in regulatory burden likely to be created is appropriate to ensure that we are putting requirements in place to protect students.
23. We have had regard to section 2 which discusses the need for regulators to provide simple and straightforward ways to engage with those they regulate and hear their views. We have considered this section through our consultation process where we encouraged feedback from providers, student representatives and other stakeholders. We carefully considered this feedback and have used these views to inform our final decisions. We will continue to engage with providers to support them in the implementation of the condition.
24. Section 3 of the code is particularly relevant, and discusses the need to base regulatory activities on risk. We have had regard to this section by setting out why we consider students, including in particular those with certain protected characteristics, to be at risk of harassment and sexual misconduct, as well as how that can limit equality of opportunity. The scope and content of the condition means that regulatory burden is likely to be lower for providers that have already taken steps to address this risk. This means that we are able to take a risk-based approach and focus our regulatory action on providers that are failing to provide students with adequate protection against harassment and sexual misconduct.
25. We have had regard to section 4 of the Regulators' Code, which discusses sharing information about compliance and risk. Our work on a pilot survey to understand the prevalence of sexual misconduct in higher education is, however, relevant to this section of the Regulator's Code and we will continue to consider ways to share survey evidence with providers to inform their view of risks to their students. In the OfS Regulatory advice 21, we set out information we would normally expect to publish.⁴⁰ This includes but is not limited to information relating to investigations into non-compliance with one of our conditions of registration and a report of any assessment of potential regulatory concerns. This would apply to the new condition of registration on harassment and sexual misconduct.
26. We have had regard to section 5 of the Regulators' Code, which discusses ensuring clear information, guidance and advice is available to help those we regulate meet their responsibilities to comply. We have considered this section by developing additional guidance for various parts of the condition to support understanding and compliance. We have refined terminology and definitions since our consultation to ensure clarity.

⁴⁰ See www.officeforstudents.org.uk/publications/regulatory-advice-21-publication-of-information/.

Annex C: Consultation proposals and questions

Proposal A – to introduce a new condition of registration, E6: Harassment and sexual misconduct

Question 1a: Do you agree or disagree with the proposal to introduce a new general ongoing condition of registration relating to harassment and sexual misconduct? Please give reasons for your answer.

Question 1b: Do you have any alternative suggestions to the proposal to introduce a new general ongoing condition relating to harassment and sexual misconduct? If so, please explain and provide reasons for your view.

Proposal A – to define harassment as “‘harassment’ has the meaning given in section 26 of the Equality Act 2010 and section 1 of the Protection from Harassment Act 1997 (in its entirety, and as interpreted by section 7 of the Act).”

Question 2a: Do you agree or disagree that the definition of harassment in proposed condition E6 should have the meaning given in section 26 of the Equality Act 2010 and section 1 of the Protection from Harassment Act 1997? Please give reasons for your answer.

Question 2b: Do you have any alternative suggestions to the proposal in question 2a that you think may be more appropriate? If so, please explain and give reasons for your view.

Proposal A - to define sexual misconduct as “‘sexual misconduct’ means any unwanted or attempted unwanted conduct of a sexual nature and includes but is not limited to:

- i. sexual harassment as defined by section 26(2) of the Equality Act 2010; and**
- ii. assault as defined by the Sexual Offences Act 2003; and**
- iii. rape as defined by the Sexual Offences Act 2003.**

Question 3a: Do you agree or disagree that the definition of sexual misconduct in proposed condition E6 should mean any unwanted or attempted unwanted conduct of a sexual nature and include but not be limited to the definition of ‘sexual harassment’ contained in section 26(2) of the Equality Act 2010 and rape and assault as defined by the Sexual Offences Act 2003? Please give reasons for your answer.

Question 3b: Do you have any alternative suggestions to this proposal that you think may be more appropriate? If so, please explain and give reasons for your view.

Proposal B: to require a provider to develop and publish a ‘single document’ with ‘minimum content requirements’

Question 4a: Do you agree or disagree with the proposal that a provider should create a single document which comprehensively sets out policies and procedures on subject matter relating to incidents of harassment and sexual misconduct, and prominently publish that document in the manner we are proposing? Please give reasons for your answer.

Question 4b: Do you have any alternative suggestions to the proposal in question 4a? If so, please explain and provide reasons for your view.

Question 5a: Do you agree or disagree with the proposal that minimum content requirements should be specified for the single document we propose a provider should maintain? Please give reasons for your answer.

Question 5b: Do you have any alternative suggestions to the proposal in question 5a? If so, please explain and give reasons for your view.

Question 6a: Do you agree or disagree with the minimum content requirements proposed for the single document we propose a provider should maintain? Please give reasons for your answer.

Question 6b: Do you have any alternative suggestions to the proposal in question 6a? If so, please explain and give reasons for your view.

Question 7a: Do you agree or disagree with the proposal for content principles for the single document we propose a provider should maintain? Please give reasons for your answer.

Question 7b: Do you have any alternative suggestions to the proposal in question 7a? If so, please explain and give reasons for your view.

Proposal C: to require a provider to have the capacity and resources necessary to facilitate compliance with the condition

Question 8a: Do you agree or disagree with the proposal that a provider should be required to have the capacity and resources necessary to facilitate compliance with this condition? Please give reasons for your answer.

Question 8b: Do you have any alternative suggestions for the proposal in question 8a? If so, please explain and give reasons for your view.

Proposal D: Require providers to comply with the requirements of the condition in a manner which is consistent with the freedom of speech principles

Question 9a: Do you agree or disagree with the proposal that a provider should be required to comply with the proposed condition in a manner that is consistent with the proposed freedom of speech principles? Please give reasons for your answer.

Question 9b: Do you have any alternative suggestions to the proposal in question 9a? If so, please outline and give reasons for your view.

Proposal E: Require providers to prohibit any contractual provisions that prevent or restrict someone from disclosing information about an allegation of harassment or sexual misconduct which affects one or more students. A provider must not restrict the disclosure of information in relation to harassment or sexual misconduct incidents, must not enforce any restrictions agreed prior to the date the condition takes effect, and must take all reasonable steps to ensure no other person places or enforces restrictions on the disclosure of information.

Question 10a: Do you agree or disagree with the proposal to prohibit a provider from using provisions which have the effect of preventing or restricting the disclosure of information about incidents relating to harassment or sexual misconduct? Please give reasons for your answer.

Question 10b: Do you support any of the alternative options we have outlined or do you have any other proposals? If so, please explain and provide reasons for your view.

Proposal F: To require a provider to take all reasonable steps to maintain a register of personal relationships between staff and students and manage and address any conflicts of interest/abuse of power

OR

To require a provider to take all reasonable steps to prohibit any staff member from having a personal relationship with one or more students.

Question 11a: Assuming that the OfS introduces a new condition of registration E6 (subject to the outcome of this consultation), which of the following options discussed in Proposal F do you think should be included in condition E6:

A. Option A as proposed;

B. Option B as proposed;

C. An option similar to Option A but with some changes (in which case please set out the changes that you would suggest in the next question);

D. An option similar to Option B but with some changes (in which case please set out the changes that you would suggest in the next question);

E. Any of the alternative options considered in this proposal;

F. None of the above.

Question 11b: Please give reasons for your answer in question 11a above.

Question 11c: Do you have any alternative suggestions to the options considered in Proposal F? Please give reasons for your answer.

Question 11d: We would welcome views on whether Option B or any of the other options considered should allow for other exemptions. Please give reasons for your view.

Proposal G: Proposed implementation

Question 12a: Do you agree or disagree with the proposals for the implementation of any new condition of registration? Please give reasons for your answer.

Question 12b: Do you have any alternative suggestions for the implementation of any new condition of registration that you believe may be more appropriate? If so, please explain and give reasons for your view.

Question 12c: Do you have any comments about the proposed timeframe for implementing any new condition outlined in this consultation? If so, please explain and provide reasons for your view.

Other questions

Question 13: Do you foresee any unintended consequences resulting from the proposals set out in this consultation? If so, please indicate what you think these are and the reasons for your view.

Question 14: Are there aspects of the proposals you found unclear? If so, please specify which, and tell us why.

Question 15: In your view, are there ways in which the policy objectives discussed in this consultation could be delivered more efficiently or effectively than proposed here?

Question 16: Do you have any comments about the potential impact of these proposals on individuals on the basis of their protected characteristics?

Annex D: Additional evidence of harassment and sexual misconduct in higher education

1. This Annex includes additional evidence related to harassment and sexual misconduct since the publication of our consultation on a proposed new condition of registration on harassment and sexual misconduct.⁴¹ Annex E of the consultation provided evidence which points to the extent and scale of harassment and sexual misconduct in higher education and the impact of incidents on students.⁴²

Harassment

2. In 2023, Universities UK (UUK) conducted a student survey⁴³ investigating students' experiences of racial harassment with a sample size of 828. This was a repeat of polling done by the EHRC in 2019 to aid in comparison between years. The data was weighted using the Higher Education Statistics Agency (HESA) data by ethnicity, level of study and sex to ensure the results are representative of the whole student population. The survey found that 15 per cent of all student respondents had experienced some form of racial harassment since the beginning of their course. This figure rose to 24 per cent for students from an ethnic minority background and was highest at 45 per cent for black students. The figure for black students had also significantly increased from previous survey data collected in 2019 by 16 percentage points (2023: 45 per cent v. 2019: 29 per cent). 12 per cent of students reported experiencing racial harassment since the start of the 2021-22 academic year. Of those, 55 per cent reported experiencing racial harassment multiple times. The most common form of racial harassment reported by respondents was racist name-calling, insults or jokes with 55 per cent of those who had experienced harassment reporting this. This study also found there had been an increase in those witnessing harassment with 26 per cent reporting witnessing harassment since the beginning of their course, compared with 14 per cent in the 2019 data collection. The majority of those who said they had witnessed racial harassment this academic year reported witnessing more than one incident, with 65 per cent reporting two-five times.
3. The EHRC published its inquiry⁴⁴ into racial harassment in publicly funded universities in Britain in October 2019. The inquiry gathered evidence from an online call for evidence, roundtable discussions, interviews and desk-based research, quantitative and qualitative research with universities and a statistical survey of students of more than 1000 randomly selected higher education students across Britain. It identified that students were most likely

⁴¹ See www.officeforstudents.org.uk/publications/consultation-on-a-new-approach-to-regulating-harassment-and-sexual-misconduct-in-english-higher-education/.

⁴² Definitions of harassment and sexual misconduct used in various sources and surveys may not be consistent with the definition of harassment in the OfS condition of registration.

⁴³ Universities UK (2023) 'Survey data: What are students' experiences of racial harassment?' available at: <https://www.universitiesuk.ac.uk/sites/default/files/uploads/Reports/tackling-racial-harassment-progress-since-2020-survey-data.pdf>.

⁴⁴ Equality and Human Rights Commission (2020) 'Tackling racial harassment: Universities challenges' Available at: <https://www.equalityhumanrights.com/sites/default/files/tackling-racial-harassment-universities-challenged.pdf>.

to experience racial harassment by a fellow student. Students also identified the following as perpetrating the harassment:

- a. other students (n= 365)
 - b. their tutor or another academic (n= 154)
 - c. members of the public (n= 154)
 - d. other university staff (n= 107).
4. Community Security Trust's (CST) 2023 Antisemitic Incidents Report⁴⁵ reported receiving the highest annual total of antisemitic incidents⁴⁶ in higher education that they have recorded, with 182 incidents recorded in which 'the victims or offenders were students or academics, or which involved student unions, societies or other representative bodies'. This represents a 203 per cent increase from the number of incidents recorded in 2022. Most of the incidents occurred off campus (110). However, many (72) occurred on campus and online (77).
 5. Between October 2023 and February 2024, Tell Mama, which records anti-Muslim incidents in the UK, documented 2,010 Islamophobic incidents.⁴⁷ This is a 235 per cent increase from the same period in the previous year.⁴⁸ While this data is not specific to the higher education context, it does suggest an increase in incidents.
 6. A survey conducted at Durham University explored religious and racial hate experience.⁴⁹ This was a cross-sectional survey of the university's student and staff populations. Students and staff were invited to take part in the online survey. The survey received 2,254 respondents. Of these, 27 per cent (228 staff, 366 students) reported experiencing one or more unwanted behaviours while at Durham. The unwanted behaviours were defined as 'harassment, threats, verbal abuse, cyber bullying, unwanted physical contact, indirect discrimination, physical assault, damage to property or sexual violence'. Students reported verbal abuse (53 per cent), indirect discrimination (35 per cent) and harassment (34 per cent)

⁴⁵ Community Security Trust (2024) 'Antisemitic Incidents Report 2023', available at: https://cst.org.uk/data/file/9f/Antisemitic_Incidents_Report_2023.1707834969.pdf.

⁴⁶ CST defines an antisemitic incident as any malicious act aimed at Jewish people, organisations or property, where there is evidence that the act has antisemitic motivation or content, or that the victim was targeted because they are (or are believed to be) Jewish. This is a narrower definition than that used by the criminal justice system, which defines an antisemitic hate incident as 'Any non-crime incident which is perceived by the victim or any other person, to be motivated by a hostility or prejudice based on a person's race/religion or perceived race/religion.' CST states that 'The International Holocaust Remembrance Alliance (IHRA) working definition of antisemitism is a useful guide in identifying the different types of antisemitic language that may be used in an incident.'

⁴⁷ Tell Mama has applied a reworked version of the International Holocaust Remembrance Alliance (IHRA), working definition of antisemitism: 'A certain perception of Muslims, which may be expressed as hatred or outward hostility towards Muslims. Hatred may take the form of anti-Muslim rhetoric and physical manifestations that are targeted towards Muslims (or non-Muslim individuals considered to be sympathetic to Muslims) and/or their property; or towards Muslim community institutions or religious and other related social institutions'.

⁴⁸ BBC news (2024) 'Anti-Muslim cases surge in the UK since Hamas attacks, charity finds', available at: <https://www.bbc.co.uk/news/uk-england-68374372.amp>.

⁴⁹ Siddiqui, N., Towl, G., Matthewson, J., Stretesky, C., & Earnshaw, M. (2019). 'Religious and Race Hate Experience Survey: Report Findings', available at: <https://durham-repository.worktribe.com/output/1635051/>.

as the most common unwanted behaviours. In particular, this study found that those with a disability or who identified as transgender, non-binary or 'other' gender as the most likely to report experiencing unwanted behaviour with reporting rates of 45 per cent and 38 per cent respectively. Only 20 per cent of those who said they had experienced a 'hate incident' reported it.

7. The 2023 Disabled Students UK annual disabled students survey⁵⁰ gathered data from 1,372 disabled respondents at 11 providers by disseminating the survey through providers' disability service departments. The survey focused on the disabled student experience and asked respondents 'Have you experienced bullying or harassment by staff or students at this institution?', with 15 per cent of respondents selecting 'yes'.⁵¹
8. Research by the Centre for Hate Studies in 2020 focused on the nature, scale and impact of harassment facing university students.⁵² Participants were reached through communications disseminated from academic and professional services teams and via social networks and other membership groups and data was gathered through a university-wide survey and 39 follow-up interviews. This research found that of the 565 participants in the study, 227 had experienced some form of harassment while a student at the University of Leicester. It also found that just 28 per cent of these students had reported their experience, and only 23 per cent had accessed support. Findings included:
 - a. 59 per cent of victims surveyed said they had been subjected to gender-based harassment, making it the most commonly identified form of targeted hostility experienced by students.
 - b. 27 per cent of victims referred to having been targeted on the basis of their race.
 - c. Five religious identities were identified as being targeted for harassment: Muslim (53 per cent), Christian (21 per cent), Jewish (11 per cent), Hindu (5 per cent) and Sikh (5 per cent)
 - d. 14 per cent of victims reported that they had been targeted on the basis of their sexual orientation.
 - e. 7 per cent of victims said they had been targeted on the basis of their learning disability and 4 per cent had been targeted on the basis of their physical disability
 - f. 29 per cent of victims said they had suffered a negative impact on their academic attainment or performance as a result of their victimisation.

⁵⁰ Cambridge University, University of Manchester, Oxford University, University College London, University of Exeter, Canterbury Christ Church University, University of Plymouth, University of Leicester, Bath Spa University, Royal Holloway, and Heriot-Watt University.

⁵¹ Disabled Students UK (2023) 'Access Insights Report 2023', available at: https://disabledstudents.co.uk/wp-content/uploads/2023/11/Disabled-Students-UK_Access-Insights-2023-Report.pdf.

⁵² Wertans, E. and Chakraborti, N. (2020). 'A catalyst for change: Recognising and responding to students' experiences of harassment'. Leicester: Centre for Hate Studies. Available at: <https://le.ac.uk/-/media/uol/docs/research-centres/hatestudies/research-reports/a-catalyst-for-change-pdf.pdf>.

9. In 2014, the NUS conducted a national survey with more than 4,000 respondents from 80 higher education providers in the UK.⁵³ It explored experiences of lesbian, gay, bisexual and transgender (LGBT) students in higher education. Findings included:
- a. Two in ten (20.6 per cent) of trans students⁵⁴ said they feel completely safe on campus
 - b. 36.7 per cent of LGB+⁵⁵ students said they felt completely safe on campus compared with 43 per cent of heterosexual students.
 - c. One in five LGB+ and one in three trans respondents said they had experienced at least one form of bullying or harassment on their campus.
 - d. 14 per cent of LGBT respondents who said they had experienced name-calling, 23 per cent of those who said they had experienced harassment, 26 per cent of those who reported experiencing threats and intimidation, and a third of those who reported experiencing physical assault reported it to at least one person.
 - e. Trans respondents were more likely than LGB students to report experiencing harassment (22 per cent vs. 9 per cent), threats or intimidations (13.5 per cent vs. 6 per cent), and physical assault on campus (5 per cent vs. 2 per cent).
 - f. 16 per cent of respondents who reported experiencing physical assault based on their (perceived) sexuality or gender identity reported it to the police.
 - g. LGBT students who reported experiencing a form of homophobic or transphobic harassment were 2–3 times more likely to consider leaving their course.

Sexual misconduct

10. Alongside the consultation on a proposed new condition of registration on harassment and sexual misconduct, the OfS commissioned a pilot sexual misconduct prevalence survey. The pilot aimed to investigate the prevalence of sexual misconduct in the higher education sector in England, and to test whether such a survey could be carried out on a wider basis. In autumn 2023 the survey was carried out by IFF Research at 12 providers, all of which volunteered to be part of the project. The survey was conducted online, using a personalised link, and students were contacted initially through their academic email address and later additionally on their personal email address. The survey was open for six weeks from 25 September 2023 to 3 November 2023. 5,430 students responded to the first survey question. However, not all students completed the survey. Respondents who quit the survey before

⁵³ NUS (2014) 'Education Beyond the Straight and Narrow: LGBT students' experience in higher education', available at: <https://www.nusconnect.org.uk/resources/education-beyond-the-straight-and-narrow-2014>.

⁵⁴ The term 'trans' is used in this report to refer to respondents who said their gender identity did not correspond to 'the identity they were assigned at birth'

⁵⁵ This term 'LGB+' is used in this report to refer to respondents who defined their sexuality as lesbian, gay, bisexual or in another way (including queer, asexual, pansexual or 'unsure').

reaching the end did so at different points. This meant that 2,885 people responded to the questions about relationships between staff and students.⁵⁶

11. Key findings from the pilot survey include:
 - a. 20 per cent of students responding reported experiencing unwanted behaviours of a sexual nature (sexual harassment) during the period between 1 September 2022 and 1 September 2023. (5,090 respondents).
 - b. Of those, 69 per cent went on to say that at least one experience involved someone connected with the university, occurred in a university setting, or both.
 - c. Nine per cent of students reported experiencing unwanted sexual contact (also referred to in our pilot prevalence survey report as assault and/or violence) during the period between 1 September 2022 and 1 September 2023. (4,795 respondents.)
 - d. Of these students who responded that they had experienced unwanted sexual contact in the specified 12-month reporting period, 54 per cent went on to say that at least one experience involved someone connected with the university, occurred in a university setting, or both.
 - e. One per cent of students reported experiencing a relationship with a member of staff during the period between 1 September 2022 and 1 September 2023. (2,845 respondents.)⁵⁷
12. The pilot survey revealed that some student groups were more affected by unwanted behaviours of a sexual nature than the total figure of 20 per cent. This includes female respondents (27 per cent), respondents with a disability (32 per cent), those who are bisexual (37 per cent) or gay/lesbian (34 per cent), and those under 21 (31 per cent).
13. Of respondents who experienced unwanted sexual conduct, the prevalence was higher among some groups of students than the overall prevalence of 9 per cent. This includes female respondents (13 per cent compared with 4 per cent of male respondents), respondents with a disability (18 per cent), those who are bisexual (22 per cent) or gay/lesbian (21 per cent), and those under 21 (16 per cent).
14. We also commissioned Savanta to conduct a sexual misconduct poll asking current students about their experiences and perceptions of sexual misconduct on campus. In August 2023 Savanta conducted an online survey, receiving 3,017 responses.⁵⁸ Key findings from the poll include:
 - a. 61 per cent of students who responded reported experiencing at least one type of unwanted behaviour of a sexual behaviour nature (referred to in the report of the poll

⁵⁶ The full report of the survey findings is available at: www.officeforstudents.org.uk/publications/sexual-misconduct-prevalence-survey-pilot-2023-evaluation/.

⁵⁷ The numbers in brackets represent the number of students that responded to each question. These numbers vary as some students dropped out of the survey meaning some did not complete all questions.

⁵⁸ The full poll report is available at: www.officeforstudents.org.uk/publications/sexual-misconduct-prevalence-survey-pilot-2023-evaluation/.

findings as sexual harassment) since being a student, with 43 per cent experiencing an incident in the past year. Unwanted sexual behaviours were more commonly experienced by women than men with 48 per cent of women and 20 per cent of men experiencing someone making suggestive looks or staring at their body and 29 per cent of women and 17 per cent of men experiencing someone asking, hinting or making unwelcome requests that they have sex.

- b. 58 per cent of those who had experienced sexual harassment in the past year indicated that at least one incident involved someone connected with the university (including students or staff members).
 - c. Over a third (36 per cent) of respondents said that, since being a student, they had experienced unwanted sexual contact (assault and/or violence) of some kind and 21 per cent of respondents reported experiencing unwanted sexual contact (assault and/or violence) in the 12 months prior to the survey.
 - d. Over a third (36 per cent) of respondents said that, since being a student, they had experienced unwanted sexual contact (assault and/or violence) of some kind and 21 per cent of respondents reported experiencing unwanted sexual contact (assault and/or violence) in the 12 months prior to the survey.
 - e. Around one in twenty respondents said that they had experienced unwanted sexual penetration (6 per cent) or oral sex (5 per cent) or that someone unsuccessfully tried to sexually penetrate them (7 per cent) or make them have oral sex (5 per cent) when they did not want to.
 - f. A fifth (20 per cent) of respondents who reported experiencing sexual harassment in the last year sought support from their university. Over a third (36 per cent) of respondents said that, since being a student, they had experienced unwanted sexual contact (assault and/or violence) of some kind and 21 per cent of respondents reported experiencing unwanted sexual contact (assault and/or violence) in the 12 months prior to the survey.
 - g. While 44 per cent of respondents who reported experiencing an incident of unwanted sexual contact (assault and/or violence) that occurred in the last year said that it did not take place in a university setting, 28 per cent reported that their experiences were exclusively in a university setting and 26 per cent reported that their experiences took place in a mix of university and non-university settings.
 - h. 10 per cent of respondents reported having had an intimate relationship with a member of staff in the 12 months before the survey.
15. A 2021 report 'Students' accounts of grooming and boundary-blurring behaviours by academic staff in UK higher education'⁵⁹ conducted qualitative interviews with students who tried to report experiences of sexual misconduct from academic staff. This research describes 'boundary-blurring behaviours' as 'those that transgress (often tacit) professional boundaries' and 'grooming' as a 'pattern of these behaviours over time between people in positions of unequal power that may lead to an abuse of power'. Among other findings, it found that wider

⁵⁹ See <https://www.tandfonline.com/doi/full/10.1080/09540253.2021.1884199>.

social inequalities (sex, age, class) as well as the power imbalance between student and staff members, including material and academic rewards or resources the student may be dependent on, can result in consent being compromised and negative impacts on the student.

16. A national consultation into sexual assault and harassment in higher education was conducted by Revolt Sexual Assault and the Student Room, with a sample of 4,491 students and recent graduate respondents representing 153 different higher education providers.⁶⁰ This survey found that 50 per cent of all respondents had experienced sexual harassment. This figure rises to 57 per cent for female students and recent graduates in comparison to 19 per cent of male students reporting experiencing sexual harassment. Students with a disability reported the highest rate of experiencing sexual harassment with 62 per cent reporting this. Only six per cent of those who reported experiencing sexual assault or harassment reported it to their university. Additionally, only seven per cent of students reported knowing a lot about their university's sexual violence policy. The survey also found that experience of sexual violence (either assault or harassment) resulted in negative impacts with respondents reporting skipping lectures, tutorials, changing or dropping certain modules to avoid the perpetrators (25 per cent) and suspending their studies or dropping out of their degree (16 per cent).
17. In 2020 the Government Equalities Office conducted an online survey exploring sexual harassment in the UK.⁶¹ The survey received 12,131 responses which constituted a nationally representative cross section of age, sex, religion, ethnicity and sexual orientation of the UK. The survey found that 72 per cent of the UK population reported experiencing harassment in their lifetime and 43 per cent experienced at least one incident of sexual harassment in the last year. The most common behaviours in the last year were reported as unwelcome:
 - a. sexual jokes (21 per cent in the last year, 47 per cent over lifetime)
 - b. 10 per cent of respondents reported having had an intimate relationship with a member of staff in the 12 months before the survey
 - c. 10 per cent of respondents reported having had an intimate relationship with a member of staff in the 12 months before the survey.
18. While the survey explored prevalence for the entire UK population, the following groups were significantly more likely to say they had experienced at least one form of sexual harassment in the last 12 months:⁶²
 - a. women: 51 per cent of women compared with 34 per cent of men

⁶⁰ See <https://revoltsexualassault.com/wp-content/uploads/2018/03/Report-Sexual-Violence-at-University-Revolt-Sexual-Assault-The-Student-Room-March-2018.pdf>.

⁶¹ Government Equalities Office (2021) '2020 Sexual Harassment Survey', available at: https://assets.publishing.service.gov.uk/media/60f03e068fa8f50c77458285/2021-07-12_Sexual_Harassment_Report_FINAL.pdf.

⁶² For all questions, the report conducted an analysis of the following subgroups: gender, age, sexual orientation, transgender, ethnicity, and disability.

- b. 10 per cent of respondents reported having had an intimate relationship with a member of staff in the 12 months before the survey
 - c. 10 per cent of respondents reported having had an intimate relationship with a member of staff in the 12 months before the survey
 - d. 10 per cent of respondents reported having had an intimate relationship with a member of staff in the 12 months before the survey
 - e. 10 per cent of respondents reported having had an intimate relationship with a member of staff in the 12 months before the survey
 - f. 10 per cent of respondents reported having had an intimate relationship with a member of staff in the 12 months before the survey.
19. Bellas and Gosset (2001)⁶³ conducted 25 phone interviews with 25 professors and current or former students who had been involved in staff-student sexual relationships in the US to explore their views on these types of relationships. Nearly all the respondents believed the relationship to be consensual, with two-thirds reporting the relationship was either initiated by the student or mutually. However, drawing on their own experiences, nearly all of them felt that relationships between staff and students with supervisory relationships were inappropriate and were supportive of policies being put in place which prohibit these relationships despite their experiences within them.
20. A 2019 study by Laird and Pronin explored three experiments with 336 participants in the US, and found that expressions of sexual interest by professors towards their students could result in coercion due to the unequal power dynamic. They found that female students were particularly at risk of coercion, regardless of the sex of the professor, and that this coercion had a particularly negative effect on female students, leading to doubts in their academic competence based on the sexual advances.⁶⁴

Additional evidence related to provisions of the condition

21. We have included additional evidence related to freedom of speech due to the intersection between the requirements in the new condition of registration, providers' freedom of speech obligations and Proposal D of our consultation.
22. The 2023 National Student Survey (NSS) asks the question 'During your studies, how free did you feel to express your ideas, opinions and beliefs?'. Among students registered at English higher education providers, 85.9 per cent gave the two most positive answers (very good or good).⁶⁵ The results were comparable in 2024, with 86.4 per cent giving the two most positive

⁶³ 'Love or the "Lecherous Professor": Consensual Sexual Relationships Between Professors and Students', <https://doi.org/10.1111/j.1533-8525.2001.tb01779.x>

⁶⁴ See 'Professors' Romantic Advances Undermine Students' Academic Interest, Confidence, and Identification'. Available at <https://doi.org/10.1007/s11199-019-01093-1>.

⁶⁵ See www.officeforstudents.org.uk/data-and-analysis/national-student-survey-data/nss-data-archive/nss-2023-results/.

answers.⁶⁶ The 2023 National Student Survey (NSS) asks the question ‘During your studies, how free did you feel to express your ideas, opinions and beliefs?’. Among students registered at English higher education providers, 85.9 per cent gave the two most positive answers (very good or good).⁶⁷ The results were comparable in 2024, with 86.4 per cent giving the two most positive answers.⁶⁸

23. The Higher Education Policy Institute conducted a poll of 1,000 undergraduate students in 2022 on a range of free speech issues.⁶⁹ The results suggest that students have become significantly less supportive of free expression. Findings include:
 - a. 79 per cent of students believe ‘Students that feel threatened should always have their demands for safety respected’ (up from 68 per cent in 2016) while four per cent disagree (down from 10 per cent in 2016).
 - b. 61 per cent of students say, ‘when in doubt’ their own university ‘should ensure all students are protected from discrimination rather than allow unlimited free speech’ (up from 37 per cent in 2016).
 - c. The proportion of students who agree that ‘if you debate an issue like sexism or racism, you make it acceptable’ has doubled to 35 per cent (double the 17 per cent result in 2016).
 - d. Around two-thirds of students express support for an additional layer of restrictions, such as actively consulting ‘special interest groups’ before events take place, safe-space policies and banning tabloid newspapers from students’ union shops – in all three of these examples, support has grown considerably since 2016; and
 - e. Approximately four-in-10 students want much tougher restrictions on campus than have typically been seen, including universities firing academics if they ‘teach material that heavily offends some students’ and students’ unions banning ‘all speakers that cause offence to some students’ – in both these cases, support is currently more than twice as high as it was in 2016.
24. Overall, the results indicate that students are more concerned with protection from offensive views than those who took part in the 2016 survey.
25. Research from The Policy Institute at Kings College London explored the views of students and the public on free speech and offence.⁷⁰ Results indicate:

⁶⁶ See www.officeforstudents.org.uk/data-and-analysis/national-student-survey-data/.

⁶⁷ See www.officeforstudents.org.uk/data-and-analysis/national-student-survey-data/nss-data-archive/nss-2023-results/.

⁶⁸ See www.officeforstudents.org.uk/data-and-analysis/national-student-survey-data/.

⁶⁹ See <https://www.hepi.ac.uk/2022/06/23/you-cant-say-that-what-students-really-think-of-free-speech-on-campus/>.

⁷⁰ See <https://www.kcl.ac.uk/news/free-speech-in-universities-new-data-reveals-student-and-public-perceptions>.

- a. Support for allowing all ideas to be expressed is context-specific (e.g. students are more likely to indicate that people should be careful not to offend when discussing topics such as transgender issues and race and racism).
 - b. The majority of students disagree with allowing all ideas and opinions to be expressed if it will mean some students feel unsafe (60 per cent) or threatened (58 per cent).
 - c. There is a strong demand among students that safety should always be respected, and that avoiding discrimination should be a priority.
 - d. 80 per cent of students say they are free to express their views at their university, which is down from 88 per cent in 2019. It is, however, higher than the 70 per cent of the general public who say they are free to do so in UK society.
26. In relation to evidence on the use of NDAs in cases of harassment and sexual misconduct, The Legal Services Board (LSB), conducted a call for evidence in 2023 regarding the use of NDAs for harassment and sexual misconduct cases.⁷¹ The LSB described the use of NDAs as ‘unethical’ and that ‘vulnerable individuals who are the targets of discrimination, harassment or abuse may be asked or coerced through an imbalance of power to sign them’.
 27. In relation to non-disclosure agreements, in 2020, the BBC reported that 300 university NDAs have been used to resolve student grievances since 2016 across 45 universities.⁷² This information was collected using freedom of information requests. It also found that £1.3 million had been paid out, with individual payout amounts of £250 - £40,000.
 28. In 2019, The Independent reported that UK higher education providers had spent approximately £87 million on around 4,000 settlements through NDAs in the previous two years to keep allegations of bullying, harassment and sexual misconduct quiet.⁷³ This figure was discovered through freedom of information requests to nearly 140 universities, with 96 responded.
 29. In January 2022, the then Minister for Higher and Further Education encouraged providers to commit to not using NDAs in cases of sexual harassment and misconduct. At the time of writing, 86 providers in England have signed this pledge.⁷⁴
 30. The Office of the Independent Adjudicator for Higher Education (OIA) has updated its good practice framework, which states that it is not good practice to ask a student to sign a confidentiality agreement or non-disclosure agreement as part of an offer to settle or resolve a complaint. This is because ‘such agreements can leave the student feeling that their

⁷¹ See <https://legalservicesboard.org.uk/wp-content/uploads/2023/04/LSB-Call-for-Evidence-Misuse-of-NDAs.pdf>.

⁷² See <https://www.bbc.co.uk/news/uk-51447615>.

⁷³ See <https://www.independent.co.uk/news/education/education-news/universities-uk-gagging-orders-scandal-sexual-misconduct-bullying-a8874401.html>.

⁷⁴ See <https://octahedron-ferret-ybk6.squarespace.com/british-uni1>.

complaint has not been listened to or taken seriously and can mean that learning from the complaint is lost'.⁷⁵

⁷⁵ See Office of the Independent Adjudicator, 2022, 'Good Practice Framework – Handling complaints and academic appeals'. Available at: <https://www.oiahe.org.uk/resources-and-publications/good-practice-framework/handling-complaints-and-academic-appeals/>.



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