Office for Students

Securing student success: Regulatory framework for higher education in England

24 November 2022

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THE OFFICE FOR STUDENTS

REGULATORY FRAMEWORK

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

This publication is also available on the OfS website at: www.officeforstudents.org.uk/

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Contents

Summary of changes

The OfS has produced this consolidated version of the regulatory framework that integrates amendments that have already been published as of 24 November 2022. The paragraph numbering has been adjusted accordingly in light of these updates. This version also removes the list of regulatory notices and regulatory advice, as the list was out-of-date. The foreword from the OfS's former chair has been removed.

This consolidated version integrates the following amendments:

- **6 October 2022**
  Revised ongoing condition of registration B6, and consequential amendments, following consultation on the Teaching Excellence Framework (TEF).

- **3 October 2022**
  Revised initial and ongoing condition of registration B3, and consequential amendments, following consultation on regulating student outcomes.

- **30 September 2022**
  Revisions to paragraph 72, following consultation on the publication of information about providers and individuals connected with them.

- **1 May 2022**
  Revised ongoing conditions of registration B1, B2, B4 and B5 and new initial conditions of registration B7 and B8, and consequential amendments. These followed the consultation on quality and standards.

- **1 April 2022**
  New ongoing condition of registration C4 following consultation on student protection directions.

- **23 March 2022**
  Addition of the reference to the OfS's new strategy for 2022-25 following consultation on a new strategy for this period.

- **1 January 2022**
  Revisions to reportable events requirements under ongoing condition of registration F3, and consequential amendments, following consultation on revisions to reportable events.

Navigation of this regulatory framework

The Office for Students' regulatory framework

This document constitutes the regulatory framework for higher education in England required under section 75 of the Higher Education and Research Act 2017 (HERA). It replaces the previous regulatory framework for higher education in England which operated under part 2 of the Further and Higher Education Act 1992 and part 3 of the Higher Education Act 2004. It was first issued by the Office for Students (OfS) on 28 February 2018.

The audience for this regulatory framework is:

- Students, and bodies representing the interests of students, on higher education courses provided by English higher education providers.
- Providers of higher education in England and bodies representing the interests of such providers.
- Others including, but not limited to, employers, charities and research bodies that are not themselves providers.

This regulatory framework states how the OfS intends to perform its various functions, and provides guidance for registered higher education providers on the ongoing conditions of registration. The OfS will have regard to it when exercising its functions. The framework is composed of five parts:

- Part I: the OfS's risk-based approach
- Part II: sector level regulation
- Part III: regulation of individual providers
- Part IV: validation, degree awarding powers and university title
- Part V: guidance on the general ongoing conditions of registration

A copy of this regulatory framework has been sent to the Secretary of State for Education, who will lay it before Parliament.

The OfS will keep the regulatory framework under review.

Publication of regulatory notices and regulatory advice

The OfS will publish regulatory notices that provide additional information about its regulatory requirements. These constitute part of this regulatory framework under section 75 of HERA or are issued under section 29 of HERA.

In addition, the OfS will publish regulatory advice to support providers in understanding and meeting its regulatory requirements. These do not constitute part of this regulatory framework.

Wider context for the regulatory framework

The legislative underpinnings for the regulatory framework are found in HERA, which itself is based on the government's strategy for the reform of higher education in England. The following links provide more details:

- The Higher Education and Research Act 2017: www.legislation.gov.uk/ukpga/2017/29/contents/enacted/data.htm
- Success as a knowledge economy: teaching excellence, social mobility and student choice (White Paper): www.gov.uk/government/publications/higher-education-success-as-a-knowledge-economy-white-paper
- Fulfilling our Potential: Teaching Excellence, Social Mobility and Student Choice (Green Paper): www.gov.uk/government/consultations/higher-education-teaching-excellence-social-mobility-and-student-choice

PART I – The OfS's risk-based approach

1. The Office for Students (OfS) is a new regulator for English higher education. It will adopt a **bold, student-focused, risk-based approach,** reflecting the significant changes to higher education of the last 25 years and seeking to anticipate the changes still to come.

2. The OfS's primary aim is to ensure that English higher education is delivering positive outcomes for students – past, present, and future. This ambition runs through the regulatory framework and the organisation as a whole. The OfS will seek to ensure that students, from all backgrounds (particularly the most disadvantaged), can access, succeed in, and progress from higher education. The OfS is concerned with all students within its remit: from the UK and beyond; undergraduate and postgraduate; studying full time or part time and campus based or distance learners.

3. The OfS will focus on delivering the four primary regulatory objectives set out below.

The four primary regulatory objectives

All students, from all backgrounds, and with the ability and desire to undertake higher education:

1. Are supported to access, succeed in, and progress from, higher education.
2. Receive a high quality academic experience, and their interests are protected while they study or in the event of provider, campus or course closure.
3. Are able to progress into employment or further study, and their qualifications hold their value over time.
4. Receive value for money.

4. The regulatory framework is designed to mitigate the risk that these primary objectives are not met.

5. In addition to seeking to ensure that students receive value for money (Objective 4), the OfS will seek to mitigate the risk that the sector does not deliver value for money for taxpayers and citizens who invest in higher education through: the allocation of public grant funding; research funding by UKRI; and the public subsidy to the student finance system.

6. The OfS will work with UKRI to monitor and mitigate the risk relating to the sustainability of those providers that contribute to the strength of the research base, and risks to the interests of postgraduate students.

7. The OfS's regulatory approach will ensure:
    a. **A student focus:** Regulation will be designed primarily to protect the interests of students, short, medium and long term (especially the most disadvantaged), rather than those of providers.

b. **Clarity:** All registered providers will be primarily regulated by one body, with a clear path for new entrants to the sector.

c. **Accountability:** The OfS will be accountable for its decisions and subject to public scrutiny.

d. **Consistency:** There will be a single Register so students will know the minimum baseline of provision that they can expect every registered provider to deliver, and providers will compete on a level playing field.

e. **Proportionality and targeting:** Provision that presents low risk to students will be subject to less regulatory burden, while less secure elements of provision will face greater regulatory scrutiny.

f. **Competition:** The market will be regulated so that, wherever possible, choice and competition drive innovation, diversity and improvement. Where market mechanisms are not sufficient to achieve the desired outcomes, as is the case for access and participation, there will be direct regulation of providers.

8. The regulatory approach is designed to be principles-based because the higher education sector is complex, and the imposition of a narrow rules-based approach would risk leading to a compliance culture that stifles diversity and innovation and prevents the sector from flourishing. This regulatory framework does not therefore set out numerical performance targets, or lists of detailed requirements for providers to meet. Instead it sets out the approach that the OfS will take as it makes judgements about individual providers on the basis of data and contextual evidence.

9. There will be a marked shift from the previous approach to regulation. Once the regulatory framework is established, its implementation will reduce bureaucracy and unnecessary regulatory burden for individual providers and, as a consequence, for the academic and professional staff whose work is essential to successful outcomes for students.

The OfS's general duties

10. The OfS is independent from government and from providers. Its approach to regulation is underpinned by the functions, duties and powers given to it in the Higher Education and Research Act 2017 (HERA). In performing its functions, it will 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.

   ii. Targeted only at cases in which action is needed.

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

11. In making decisions, the OfS will take all of these general duties into account, weighing one against the others as it deems appropriate. Certain areas of the OfS's activity, such as the imposition of individual ongoing conditions of registration, may focus on one or more of its general duties. For example, the general duty that relates to equality of opportunity might be delivered through the work of the Director for Fair Access and Participation and through the requirement for providers to have in place access and participation plans and statements. The OfS will also develop equality objectives and an action plan to ensure that it takes equality of opportunity into account across all of its activities and decisions, and promotes equality and diversity across all aspects of its work. Issues of equality and diversity may be taken into account as the OfS makes regulatory decisions primarily, but not exclusively, through access and participation plans.

12. In exercising its functions, the OfS will have regard to this regulatory framework, and to any guidance it receives from the Secretary of State. It is also required to comply with any general directions given to it by the Secretary of State, and to the terms and conditions attached to any grants it receives from the Secretary of State, that comply with the requirements of sections 77 and 74 respectively of HERA.

13. The OfS is committed to adopting and contributing to best regulatory practice. It will comply with the Regulators' Code, and in developing this regulatory framework the OfS has consulted widely, drawn on best practice, and sought to learn from the latest in regulatory theory

Overview of the regulatory approach

14. The OfS's approach to regulation puts informed student choice and institutional autonomy at its heart. It sees the dynamic of providers responding to informed student choice as the best mechanism for driving quality and improvement, and will regulate at the sector level to enable this. The OfS will regulate at provider level to ensure a baseline of protection for all students and the taxpayer. Beyond that threshold the OfS will encourage and enable autonomy, diversity and innovation.

15. The OfS's regulatory approach also seeks to deliver social and policy objectives in areas where market mechanisms may not succeed. For example, the improvements in access and participation that students and society require will not be delivered by the market alone. This means that the OfS will take direct regulatory action to drive improvement in this area, beyond that necessary to preserve a minimum baseline.

15A. For more information about the OfS's priorities in a particular strategic period, please consult the current strategy, which can be found at www.officeforstudents.org.uk/about/how-we-are-run/our-strategy/.

Sector level regulation

16. At sector level the OfS will focus on creating the conditions for informed choice, competition, and continuous improvement. The OfS will:

    a. **Involve students** in the way that it regulates.

    b. Work with, and have oversight of, the designated data body (DDB) to coordinate, collect and disseminate **information for students**, to help them make the best possible choices. It will publish student outcomes and current and future employer needs as a way of informing student choice. It will incentivise focus on student outcomes, and support mechanisms that allow student transfer.

    c. Operate the Teaching Excellence Framework (TEF) to incentivise the improvement of the **quality of teaching**, learning and student outcomes across the sector and provide information to students about where excellent teaching and outcomes may be found.

    d. **Remove unnecessary barriers to entry** for high quality new providers, increasing diversity and competition in the sector for the benefit of students.

    e. **Remove unnecessary regulatory barriers** for all high quality providers, ensuring that providers that represent low risk to students and taxpayers experience a reduction in regulatory burden.

    f. Regulate to enable and **create space for innovation**, including in teaching and learning, while ensuring that baseline requirements for quality and other areas of risk to students are met.

    g. Champion issues and share evidence and examples of effective and innovative practice for students. It will be unafraid to **speak out on behalf of students,** and in particular will promote value for money for students and taxpayers, and will highlight inequalities wherever it sees them.

    h. Use a range of **indicators, qualitative intelligence and horizon scanning** to understand and evaluate the health of the sector.

    i. Use its **teaching grant funding** strategically, in line with government priorities, such as supporting priorities in the Industrial Strategy as well as access and successful participation for the most under-represented, and students from disadvantaged backgrounds.

Provider level regulation

17. At provider level, the OfS will regulate, and intervene where necessary, to protect the interests of all students.

18. Registration and initial risk assessment:

    a. All registered providers will be listed on a **single Register** that is accessed through a single gateway. Providers will be able to choose to register in one of **two categories**.

Each category allows access to a distinct set of benefits for providers, with regulatory requirements that are proportionate to the risks to student and taxpayer interests.

b. To register, providers will have to demonstrate that they satisfy a set of **initial conditions of registration** to ensure they are able to offer high quality higher education to students. They will be subject to a **risk assessment** to determine whether they will be able to continue to satisfy their conditions. The risk assessment will consider whether they can achieve particular outcomes rather than whether their processes meet a pre-determined specification.

c. The OfS will work with, and have oversight of, the designated quality body (DQB) to **assess the quality** of, and standards applied to, the higher education of providers seeking to register.

d. Conditions of registration are the primary tool that the OfS will use to regulate individual providers, and the OfS will decide, based on its risk assessment, which **general and specific ongoing conditions** should apply to the provider. Conditions will, in the main, be used to ensure that providers continue to meet **baseline requirements**, rather than to drive continuous improvement. An exception to this will be access and participation for providers in the Approved (fee cap) category, where the baseline requirement is that a provider must have an agreed access and participation plan which will deliver continuous improvement.

e. The OfS will use its risk assessment to decide if any **enhanced monitoring** is needed as further mitigation of the risks posed by an individual provider.

19. On the Register:

    a. All providers will be monitored using **lead indicators**, **reportable events** and **other intelligence** such as complaints. These will be used to identify early, and close to real-time warnings that a provider risks not meeting each of its ongoing conditions of registration. Regulatory decisions will not normally be taken solely on the basis of these indicators, but they will identify areas for the OfS to assess further. The OfS will respond swiftly with interventions (which may include sanctions) if deemed necessary.

    b. The OfS will also use **random sampling** to identify a small proportion of providers each year (e.g. 5 per cent) for a more extensive assessment of whether they continue to meet the general ongoing conditions of registration. This approach will be used to confirm the effectiveness of the OfS's monitoring system, and to act as a further incentive for providers to meet their ongoing conditions of registration.

20. Interventions and sanctions:

    a. If a risk of a **breach of one or more conditions of registration is identified**, the OfS will consider whether it should impose additional specific ongoing conditions of registration for the provider, to protect the interests of students and taxpayers. It will also consider whether to enhance monitoring.

    b. If a **breach** of a specific or general ongoing condition is identified, the OfS will consider the use of **formal sanctions** – monetary penalties, suspension or deregistration. Where

appropriate, these will be applied decisively, but always proportionately. Which sanctions it uses will depend on a range of factors.

The OfS's relationship with students

21. The OfS's regulatory framework is designed to deliver the four primary regulatory objectives that are designed to protect the interests of students. The OfS will use its regulatory tools at sector and provider level to ensure that higher education in England works in practice for students from all backgrounds before, during and after their studies.

22. The OfS will engage with students to ensure that their voice is heard. The OfS's Student Panel will operate with a clear link to the formal governance structure of the OfS, and will support the ability of the student representative on the main board in ensuring that students' views on regulation and other issues are taken into account.

23. Alongside the student representation on the board and Student Panel, the OfS will seek the input of individual students and their representative bodies, including student unions. The main regulator of student unions is the Charity Commission. However, student unions can play an important part in the academic and wider experience of students, and form a significant element of the overall student experience. The OfS will therefore want to work with student unions, taking account of their role and contribution.

The OfS's relationship with providers

24. The OfS's risk-based approach is central to how it will interact with providers. The OfS's engagement with an individual provider is intended to allow the OfS to make appropriate regulatory decisions about managing risks associated with that provider. It is not to provide support for improvement activities, or to require the provider to take actions the OfS would like to see, unless there is a risk of the provider breaching its conditions of registration.

25. The OfS will seek open and trusting relationships with providers, because this is the mechanism best able to achieve effective regulation in the interests of students. This will not preclude immediate and decisive interventions where there is a risk of a breach of a condition of registration.

26. Dialogue will focus on specific regulatory issues rather than the general circumstances and activities of the provider. The OfS may alert a provider where there may be issues with the provider's compliance with a condition of registration, but it will not provide advice to providers about how they should run their organisation. Providers should look to other sources, for example to sector bodies, for such advice and support.

27. A provider will be expected to inform the OfS of an actual or potential breach of its conditions of registration, or a serious risk of such a breach occurring.

The OfS's information duties

28. The use of information, including data and qualitative intelligence, will underpin how the OfS undertakes its regulatory functions. The OfS will take an information-led and proportionate

approach to monitoring individual providers, ensuring that students can access reliable information to inform their decisions.

29. The Secretary of State, on the recommendation of the OfS, has designated the Higher Education Statistics Agency (HESA) to perform specific data duties as the DDB. Schedule 6 of HERA sets out the framework for the relationship between the OfS and the DDB. The DDB will collect, make available, and publish appropriate information on behalf of the OfS, and the OfS will be responsible for holding the DDB to account for the performance of those functions. The parameters within which the OfS will require the DDB to operate will be set out in a designation agreement between the two organisations.

30. The OfS will develop a data strategy in 2018. This will set out how it intends to fulfil its responsibilities in relation to data; the data requirements it will place on providers; how it will work with the DDB; and the mechanisms it will use to ensure it takes account of the data needs of other organisations, including the sector itself and the DDB's statutory customers.

31. The information and data the OfS requires to fulfil its functions will be wide-ranging. It will need to be sufficient to support the OfS to:

    a. Establish and monitor a set of lead indicators to understand provider performance and regulate in a proportionate and risk-based way.

    b. Target, evaluate and improve access and participation, and equality and diversity activities.

    c. Monitor the sector as a whole, to understand trends and emerging risks at a sector level and work with the sector to address them.

    d. Ensure students can access reliable and appropriate information to inform their decisions about whether to study for a higher education qualification and, if so, identify which provider and course is most likely to meet their needs and aspirations.

    e. Work with employers and with regional and national industry representatives to ensure that student choices are aligned with current and future needs for higher level skills.

    f. Operate the TEF.

    g. Support registered higher education providers in meeting their transparency conditions.

    h. Support the Department for Education, given its overall responsibility for the policy and funding framework in which the sector operates, and other public bodies such as UKRI in the delivery of their prescribed functions.

32. It is envisaged that reliable information and data will be collected, as now, through a combination of data returns from the sector, annual surveys, data sharing with other bodies and bespoke requests.

The OfS's quality and standards functions

33. The Secretary of State, on the advice of the OfS, has designated the Quality Assurance Agency for Higher Education to carry out the quality and standards assessment functions set out in section 23 of HERA and to provide advice to the OfS under section 46 of HERA.

Schedule 4 of HERA sets out the framework for the relationship between the OfS and the DQB. The DQB will be under a duty to perform assessment functions on behalf of the OfS. It is the responsibility of the OfS to ensure that the arrangements that are made to undertake these assessments are fit for purpose and consistent with the OfS's approach to regulation. The parameters within which the OfS requires its designated body to operate will be set out in a designation agreement between the two organisations.

The OfS's relationship with other regulators and bodies

34. Section 63 of HERA gives the OfS powers to cooperate and share information with other bodies. Section 112 gives the OfS a more specific power to cooperate and share information with UKRI, and section 113 empowers the OfS to work with the devolved administrations and their funding bodies, and with UKRI. The OfS may wish to use its powers under sections 63, 112 and 113 in a range of circumstances and, where necessary, will put in place collaboration agreements to achieve this.

35. Co-operation and sharing of information with UKRI will be essential across a range of areas of shared interest, for example in relation to: skills, capability and progression; knowledge exchange; infrastructure funding; building robust evidence and intelligence; and ensuring that the Research Excellence Framework and TEF are mutually reinforcing. The OfS and UKRI will work together to protect the interests of postgraduate students and to secure the research careers pipeline. UKRI will rely on the OfS's regulation of English higher education providers receiving research funding from Research England and UKRI and its Councils. The OfS will wish to be aware of any concerns identified by UKRI in relation to research funding or research ethics and/or where there are significant changes in this funding that could increase the risk of a provider breaching a condition of registration.

36. The OfS will seek active and constructive engagement with the devolved administrations and their funding bodies, and with other regulators and funding bodies in England, such as the Charity Commission, the Competition and Markets Authority, the Advertising Standards Authority, the Education and Skills Funding Agency, the Institute for Apprenticeships and the Office of the Independent Adjudicator. The OfS may use information from, and the views of, other regulators or funding bodies to inform its decisions about initial registration and ongoing monitoring of providers, where this is consistent with HERA.

37. The OfS's engagement with other bodies will be underpinned by the following principles:

    a. **Cooperation** by supporting and reflecting each other's duties and giving notice when there are changes to regulatory powers.

    b. **Clarity** on roles and responsibilities and how they work together where other bodies have responsibility for quality and regulation.

    c. **Appropriate burden** by working intelligently, openly and accountably to ensure that duplication of regulatory requirements is avoided when possible and there is the minimum regulation needed to deliver required outcomes.

    d. **Mutual understanding** of regulatory processes to enable confidence in and reliance on each other's processes and oversight.

    e. **Mutual assurance,** when it is needed, to ensure support on relevant emerging issues and risks.

    f. **Information sharing** of relevant and accurate data in a timely manner, where legally permissible, to minimise the data collection burden.

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

PART II – Sector level regulation

Allowing the higher education sector to flourish, and creating the space for innovation

38. The OfS will focus on creating the conditions for competition, continuous improvement and informed choice. To achieve this, and ensure that the higher education sector is able to diversify, innovate and flourish, the OfS will take action at the sector level. As it discharges its stewardship role, the OfS will have its primary regulatory objectives in mind and will ensure that it is focused on influencing outcomes for students from all backgrounds.

39. The following sections outline the approaches that the OfS will use to promote diversity, incentivise innovation, and to manage the risks to the interests of students and taxpayers at the sector level.

Removing unnecessary barriers to entry and minimising regulatory burden for all providers

40. The OfS's regulatory framework has been designed to take account of the needs of a diverse range of providers, including providers entering the higher education sector for the first time, and existing providers that represent the diversity already present in the sector. The OfS will regulate providers based on any risks they pose, not their age, size, mission or legal form (although this context will be considered where relevant to risk).

41. The regulatory framework will support new and existing providers, in particular through the following mechanisms:

    a. Recognition of the diversity of the sector

       A diverse sector supports student choice. The conditions of registration are explicitly tailored to a diverse set of providers, by focusing on the outcomes a provider is expected to achieve, rather than determining how this should be done. Providers are free to determine their individual mission, strategy and approach. For example, the management and governance condition requires a provider's governance arrangements to be appropriate for its size, complexity and legal form.

    b. Minimising regulatory burden

       Providers that do not pose specific increased risk will be subject to light touch monitoring and should have less regulatory burden once this regulatory framework is established.

       Such providers will be free to innovate however they choose, provided that they continue to deliver positive outcomes for their students.

    c. New and faster options for market entry

       The initial conditions of registration are designed so that providers do not need to have a track record of delivering higher education to be able to meet them. Where such a track record does exist, the OfS will take it into account, but there are other ways to evidence

that a condition of registration is satisfied. For example, the financial viability and sustainability condition might be satisfied by demonstrating the availability of sufficient funds and sound business plans, or a legally binding financial guarantee from a third party, rather than evidence of past financial performance. There will also be a faster route for high quality new providers to gain access to degree awarding powers directly, without the need for a track record.

d. Validation

The OfS will take steps to improve the validation system, and address some of the barriers that providers may face when seeking a validating partner and that can make offering innovative and flexible provision unnecessarily burdensome. If the OfS considers it necessary, it may enter into commissioning arrangements with existing higher education providers, or as a last resort, become a validator itself, if authorised to do so in regulations made by the Secretary of State.

Ensuring a minimum baseline of quality for all and promoting excellence and innovation beyond that baseline

42. The conditions of registration for quality and standards that apply to individual providers are designed to ensure a minimum baseline of protection for all students and the taxpayer. Beyond this minimum, autonomous providers are free to pursue excellence and innovation as they see fit, and the OfS will use its sector level tools to create the space for this to happen.

43. The OfS has adopted the TEF as a sector level intervention to promote excellence in teaching, learning and student outcomes beyond the minimum baseline. The TEF also provides information to students about where they might find such excellence. Participation in the TEF from the 2022-23 academic year is a condition of registration for providers that meet the requirements for participation set out in the guidance to Condition B6. Other registered providers may participate on a voluntary basis if they meet the eligibility criteria. It is for an individual provider to decide whether or not it wishes to perform beyond its regulated minimum quality baseline in order to affect its TEF outcome. The TEF provides a sector level incentive for improvement beyond the baseline.

44. [Not used]

Championing issues and sharing evidence and examples of effective and innovative practice

45. The OfS is well placed to champion particular issues, themes, and approaches. Although the OfS will not, in general, dictate how autonomous providers should act or what methods they should use, the OfS will be able to help shape sector wide debate and focus. Through its influencing power, the OfS may promote innovation in particular areas, or encourage the dissemination of information about what works best to enhance particular outcomes.

46. The OfS will scan the local, national and global horizon, and use intelligence obtained from its monitoring of individual providers, to identify specific themes or issues that it wishes to explore at the sector level. This will enable the OfS to anticipate future threats, challenges and

opportunities that may not immediately be apparent, but have the potential to affect the higher education landscape.

47. Certain of these themes may be more relevant to some providers than others, and the OfS may choose to explore these themes in more detail through voluntary targeted engagement with specific providers, focus groups or thematic surveys. The findings of these thematic reviews would then inform the OfS's sector wide interventions to ensure that higher education in England works in the interests of students and taxpayers.

48. A cornerstone for the OfS's agenda-setting influence will be its annual report. Here, the OfS will set out the progress that has been made, the challenges that remain, and the future needs and direction of the sector.

Promoting student choice through diversity of providers and the provision of information

Information for students

49. The information landscape is continually changing. The OfS will work collaboratively with students to ensure that the information, advice and guidance that is offered, and the way that it is provided, is continually adapted to support students to make the right higher education choices for them. The OfS will also work with employers, regional and national industry representatives, government and UKRI, to ensure that student choice is informed and enabled by the skills needs of industry and the country.

50. The OfS will improve the quality of information available to students. It will revisit the operation and design of Unistats, taking the latest thinking on behavioural science into account, to consider how best to present this data in a consistent and helpful way to ensure that students have access to an authoritative source of information about higher education. Providers will be expected to provide information, advice and guidance to students from disadvantaged backgrounds and underrepresented groups through activity agreed within their access and participation plans.

51. The OfS will draw on the longitudinal education outcomes (LEO) dataset as an important source of information about graduate outcomes. Its further development will be a priority for the OfS, taking into account both its limitations and its significant potential.

Diversity of provision and providers

52. The OfS's risk-based approach is designed to promote diversity of provision, and of providers, because this is an effective way to extend choice for students. The OfS will also support student choice by:

    a. Promoting the ability of students to transfer to another course or provider

       Students sometimes wish to transfer from one course or provider to another. Research[1] suggests that students do not see the ability to transfer as a market mechanism, and that

[1] See www.sheffield.ac.uk/uso/policy/previous-projects.

there is relatively little latent demand for transfer. However, it is an important way to improve the lives of a small, but significant minority of students who have made the wrong choice or who face a change in personal circumstances.

Many providers have formal transfer systems in place but many students are unaware of the transfer opportunities available. The OfS will work to ensure that in practice students are able to transfer within and between providers wherever it best meets their needs and aspirations.

In order to improve the information available to students, the OfS has set a condition of registration requiring providers to publish information about their arrangements for student transfer. The OfS will monitor and report on the availability and utilisation of student transfer arrangements, in accordance with section 38 of HERA.

b. Supporting accelerated courses

Accelerated courses provide students with the opportunity to study for a qualification over a shorter period of time than is typical, by increasing the intensity of study during the academic year. HERA includes powers for the government (subject to approval by Parliament) to set the annual tuition fee cap for accelerated courses at a higher level than their standard equivalent. This is intended to incentivise providers to offer accelerated courses, increasing choice for students. Maintenance costs and tuition fees for a student taking an accelerated course will usually be less than that for the same course studied over a longer period.

The OfS will support the development of this form of provision. It will make relevant information available to students, and may undertake thematic reviews to support the early and widespread adoption of such courses.

Strategic use of public grant funding for teaching and related activities

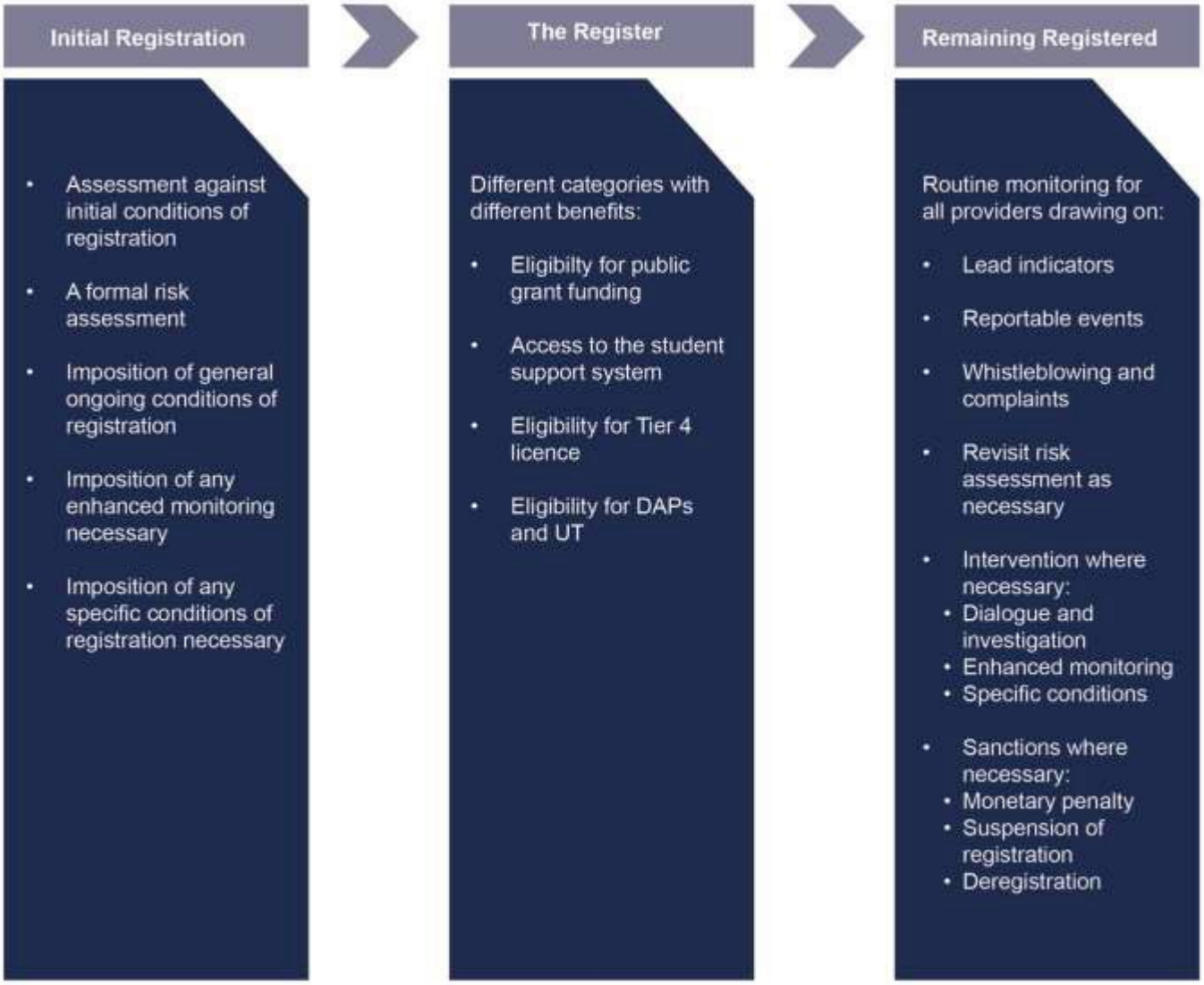
53. The teaching grant is designed to support a range of activities and provision across those providers that are registered in the Approved (fee cap) category. The majority of the funding is used to support provision where the cost is greater than the amount received as tuition fee income. This may be because the course is costly to provide, the location brings about additional costs or additional opportunities, or because the provision is highly specialised, as with the support provided to our world-leading specialist institutions. The teaching grant is also used to support access, success and progression for students from disadvantaged backgrounds and underrepresented groups where additional funding is needed to build on provider level regulation, for example to support collaboration. In addition, funding supports innovation, the Industrial Strategy, and the national academic broadband infrastructure.

54. The OfS expects to continue with these broad priorities, but to review its approach in the future to ensure that funding is deployed in a way that supports its student-focused objectives and complements its provider and sector level regulatory activity.

PART III – Regulation of individual providers

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

Regulation of individual providers



The Register

56. The OfS will regulate individual providers to help ensure the delivery of its four primary regulatory objectives. The OfS will impose conditions that higher education providers must meet to join, and remain on, its Register. The initial and ongoing conditions of registration are set out in Annex A.

57. Section 3 of HERA says that the OfS must establish a Register. The Register is a list of all higher education providers officially recognised by the OfS.

58. A higher education provider in England will be required to register with the OfS if it wishes to:

    a. Access public grant funding, and/or student support funding.

    b. Apply to the Home Office for a Tier 4 licence, or to maintain an existing licence.

    c. Apply for degree awarding powers (DAPs) and/or university title (UT).

Registration categories and the benefits of registration

59. The OfS Register will contain two registration categories:

    - Approved
    - Approved (fee cap).

60. Each provider is able to choose the registration category it wishes to apply for. A provider may subsequently choose to apply to change its registration category. Each registration category provides a set of benefits, as set out below.

		Approved (fee cap)	Approved
Public grant funding	Eligibility for direct grant funding provided by UKRI through Research England under section 97 of HERA.	Yes	No
	Eligibility for OfS teaching grant funding or any other OfS payments under sections 39 or 40 of HERA.	Yes	No
	Ability to apply for research council funding.	Yes	Yes[2]

[2] To access research council funding, providers registered in the Approved category will need to meet criteria specified for 'Independent Research Organisations' (IRO) by UKRI). This will involve a separate validation process, although the OfS and UKRI will seek to coordinate and reduce duplication wherever possible, and the OfS will work with UKRI as it develops its process to minimise any burden on providers. A provider's ability to access these sources of funding does not depend on its registration status, as the criteria for IRO status is set separately by UKRI.

		Approved (fee cap)	Approved
Access to the student support system	Ability for eligible students studying on eligible undergraduate courses to apply for support under the Education (Student Support) Regulations 2011 (as amended).	Yes Up to the higher amount with an access and participation plan.	Yes Up to lower fee amount with uncapped fees.
	Ability for eligible students studying on eligible postgraduate courses to apply for support under the Education (Student Support) Regulations 2011 (as amended).	Yes	Yes
	Ability for eligible students studying on eligible courses to apply for Disabled Students' Allowance under the Education (Student Support) Regulations 2011 (as amended).	Yes	Yes
Tier 4 sponsorship licence	Eligibility to make an application to the Home Office to recruit international students with a Tier 4 sponsorship licence.[3]	Yes	Yes
Degree awarding powers and university title	Eligibility to apply for authorisation to grant one or more of the following awards:	Yes	Yes

[3] The Home Office has proposed that registered providers in the Approved or Approved (fee cap) categories will be assessed as having met the necessary higher education educational oversight requirements for an application for a Tier 4 sponsor licence. A registered provider is one which meets the OfS eligibility requirements to register, i.e. it is an English higher education provider, and is registered with the OfS and satisfies all its conditions of registration. The ability of a registered provider to sponsor students under Tier 4 will be conditional on remaining on the OfS Register. If a provider is not eligible to register with the OfS, it may continue with its current Tier 4 educational oversight arrangements.

The Home Office remains responsible for setting the eligibility and suitability criteria for a Tier 4 licence, and decisions on Tier 4 licences will remain solely with the Home Secretary. The provisions of the OfS's regulatory framework do not constrain the ability of the Home Office to determine the requirements for educational oversight as part of the process for obtaining a Tier 4 licence. If a provider also delivers courses that are not regulated by the OfS, for example, further education courses, it will also need to obtain and maintain educational oversight for those courses from the relevant body.

		Approved (fee cap)	Approved
	a. Foundation degrees b. Awards in specific subjects c. Awards at bachelor-level d. Any taught awards		
	Eligibility to apply to use 'university' or 'university college' in a provider's title.	Yes	Yes

Which providers are required to register?

61. A provider that wishes to access the benefits of registration must register with the OfS. A provider that does not wish to access any of these benefits may choose to apply to register, or not, in either of the categories.

62. A provider that offers higher education courses directly to students (i.e. it registers its own students and receives payment directly from students or directly from the student support system on behalf of its students) must register in its own right if it wishes to access the benefits. This requirement for a provider to register in its own right is unaffected by whether or not:

    a. The provider has its own awarding powers.

    b. The provider's courses are validated by another provider or awarding body.

    c. The provider validates another provider's courses.

    d. The provider delivers subcontracted courses (where the subcontracting lead provider is receiving payment from, or on behalf of, students), if it also delivers its own or validated courses directly to its own students.

    e. The provider is delivering some of its own courses through a subcontractual agreement with another delivery partner.

Providers in subcontractual arrangements

63. Where all of a provider's higher education courses are being delivered on behalf of another provider (the lead provider) under a subcontractual arrangement, the provider delivering the courses (the delivery provider) will not normally be required to register in its own right, although it may do so if it wishes. A delivery provider will be required to register in its own right if it wishes to apply to the Home Office for a Tier 4 licence, or to maintain an existing licence. In a subcontractual arrangement, the students studying with a delivery provider are students of the lead provider and the lead provider has responsibility for the higher education provision, including its quality and costs. The OfS will ensure, through its routine monitoring of lead providers, that this responsibility is fully exercised in practice.

64. A course is considered to be part of a subcontractual arrangement if, typically:

a. There is a written, legally binding agreement in place between the lead provider and the delivery provider that sets out the conditions of the arrangement.

b. The student has a contractual relationship with the lead provider.

c. The fee and/or fee loan is paid to the lead provider.

d. The student is registered as a student of the lead provider and is included in its data returns.

65. Lead providers subcontracting all or part of a course to a delivery provider retain responsibility for the students on those courses and the quality and standards of provision. In complying with the general ongoing conditions of registration relating to quality and standards, a lead provider must demonstrate that it has reliable accountability mechanisms in place to protect the quality of provision across all delivery providers, and to support the collection of reliable data to allow the lead provider to meet its regulatory obligations.

66. Where an embedded college delivers higher education courses in partnership with a higher education provider, the college and the provider will need to consider the nature of the arrangement between them and consider whether one organisation or both are required to register. An embedded college will, in addition, need to consider whether it will qualify as an 'English higher education provider' under the definition in section 83 of HERA and be required to register in its own right for the purpose of being eligible to apply for and maintain a Tier 4 sponsorship licence from the Home Office.

66A. For the avoidance of doubt, the guidance about subcontractual arrangements in this section is subject to the effect of any condition of registration.

Providers of initial teacher training

67. Providers of School-centred initial teacher training courses (SCITTs) will not be required to register with the OfS to enable their trainees to access the student support system. SCITTs will continue to be regulated by the Department for Education, and required to comply with the criteria for charging fees. SCITTs and other initial teacher training (ITT) providers that offer other higher education courses will be required to register with the OfS if they wish to receive any of the benefits of registration.

Tier 4 sponsorship without access to public grant funding or the student support system

68. A provider seeking only eligibility to apply for a Tier 4 sponsorship licence will be required to register in the Approved category, even if it does not wish to access the other benefits available from registration. Such a provider will be subject to the same initial and general ongoing conditions of registration as other providers registered in the same category.

69. A provider that is required to obtain, and maintain, a Tier 4 sponsorship licence, but does not qualify as an 'English higher education provider' under the definition in HERA, will not be eligible to register with the OfS and will be subject to the existing oversight arrangements as defined by the Home Office.

Providers with, or seeking, degree awarding powers and/or university title

70. A provider that currently holds degree awarding powers and/or university title will normally be expected to register. In the future, only providers registered with the OfS will be eligible to apply for degree awarding powers or university title.

Content of the Register

71. The Register will provide a single, authoritative reference for students, businesses, providers, other regulators, and members of the public about a provider's regulatory status.

72. The Secretary of State for Education has laid regulations under section 3(6) of HERA[4] to set out the information that must be contained in a provider's entry in the Register. In addition, the OfS has decided that further information should also be published for each provider in the interests of transparency. Both categories of information are set out in the table below, with those items required by statute identified by an asterisk. The OfS has published a general policy in relation to the publication of information about individual providers.[4A]

The provider's name*	The legal name and any trading names of the registered higher education provider, including any names granted by, or by virtue of, any Act or Royal Charter.
The provider's unique identifier	The UK Register of Learning Providers assigns a unique UKPRN number to a provider to support the sharing of information about learning providers with government departments, agencies, learners, and employers. This number helps to identify individual providers correctly and will be included on a provider's Register entry.
The provider's contact details*	An address, email address, and telephone number at which the provider may be contacted. An address at which the provider carries on its activities, or which is the provider's principal place of business or which is otherwise suitable for the service of documents on the provider.
The address of the provider's website*	The address of the principal website maintained by, or on behalf of, the provider. A link between the OfS Register and the provider's website will enable Register users to check that they are looking at the correct provider and to find further information about a provider's activities.
The provider's legal form	The provider's legal form, for example whether it was created by Royal Charter, Act of Parliament, or as a company limited by shares or by guarantee. Whether the provider is an exempt or registered charity.

[4] See www.legislation.gov.uk/uksi/2017/1196/contents/made.

[4A] See www.officeforstudents.org.uk/publications/regulatory-advice-21-publication-of-information/.

The category in which the provider is registered*	This information allows users of the Register to understand the regulatory requirements placed on a provider and the provider's eligibility for public grant funding, student support funding, and a student sponsor licence.
The general ongoing conditions of registration applied to the provider	The general ongoing conditions of registration that apply to the provider will be listed, together with information that shows any current breach of any of these conditions. Any general ongoing conditions of registration that have been dis-applied for the provider under section 5(6) of the Higher Education and Research Act 2017 will be listed. A link to explanatory text for each condition will be included.
A link to the provider's access and participation plan, where a plan is in place*	The Register will state whether the provider has an access and participation plan in place and the period for which the plan is in place. Such plans should be easily accessible to students and prospective students on the provider's own website. The Register will include a link to the plan on the provider's website.
A link to the provider's access and participation statement, where a statement is in place	The Register will state whether the provider has an access and participation statement in place. Such statements should be easily accessible to students and prospective students on the provider's own website. The Register will include a link to the statement on the provider's website.
The fee limits that apply to the provider*	Section 11 of HERA requires the OfS to publish annually a list of registered providers that have a fee limit condition and the level of that limit. The provider's Register entry will contain information about the fee limits applicable to the provider.
The provider's access to the student support system for its initial teacher training courses	Providers accredited by the Department for Education are able to deliver initial teacher training courses and their students are able to access the student support system. The provider's Register entry will confirm whether this is the case.
A list of the provider's courses that provide access to the student support system, where the OfS has determined that approval on a course-by-course basis is desirable for that provider	The OfS may determine that access to the student support system should operate on a course-by-course basis for a provider. In these circumstances, the Register entry for the provider will contain the list of approved courses.

The outcome of any assessment of quality and standards undertaken for the provider	The OfS may assess, or make arrangements for an assessment of, the quality and standards of the provider. The outcome of such assessments will be published on the Register.
The provider's TEF eligibility and outcome	The Register will state whether the provider has met the eligibility criteria to take part in The Teaching Excellence Framework (TEF), and will contain the provider's TEF outcome.
Any specific ongoing conditions of registration applied to the provider	Any specific ongoing conditions of registration that have been applied to the provider will be listed, together with an explanation of the reasons that these have been applied unless the OfS considers it inappropriate to do so.
Any sanctions applied to the provider	Any decision to impose a sanction on a provider, including information about a provisional decision to impose a sanction in circumstances where the OfS has published information about an investigation that led to a provisional decision. A monetary penalty – including the amount of the penalty and the reason for it. Suspension of registration* – section 16 of HERA requires the Register to state that a provider's registration is suspended during any suspension, to show the limits of that suspension, and the end date for the suspension. The reason for the suspension will also be included. De-registration of the provider* – section 18 of HERA requires the OfS to maintain a list of deregistered providers and to publish this, together with any transitional and savings provisions. This list of deregistered providers does not have to be on the Register. In most cases, information about a provider's de-registration and reason for this will be published in the OfS's historic records, after a final decision has been made and any appeal process has concluded.

Any transitional provisions to 'teach out' a provider's students after the provider has been deregistered	When the OfS deregisters a provider, it may make a transitional or saving provision, which means treating the provider as though it were registered for a transitional period. Transitional and savings provisions may include any arrangements to teach out students registered with the provider at the date of its deregistration and to allow such students to continue to access the student support system until the end of their course. In these circumstances, the provider's deregistration and reason for this will be published on the Register for the duration of the teach out period.
Any authorisation for the provider to grant degrees*	The Register will include information about whether the provider has degree awarding powers and, if so, what type of powers it has and, where relevant, the period for which they have been granted.
Variation of authorisation to grant degrees*	The OfS has powers to vary a provider's authorisation to grant taught awards and research awards. The OfS will publish information on the Register about any variation in the provider's authorisation to grant degrees and the reason for this.
Revocation of authorisation to grant degrees	The OfS has powers to revoke a provider's authorisation to grant taught awards and research awards. When a provider remains registered after the revocation of such powers, the OfS will publish the timing and reasons for the revocation on the provider's entry on the Register. When a provider is deregistered after the revocation of such powers, it will no longer appear on the Register and information about the revocation will be recorded in the OfS's historic records.
Recognised awards*	The Register will identify whether awards granted by the provider have been designated by the Secretary of State or the OfS under section 214(2)(c) of the Education Reform Act 1988 (c).
The provider's validation arrangements*	The Register will identify where a provider has entered into validation agreements, which is where the courses of a provider without degree awarding powers are awarded by another provider with degree awarding powers.

The provider's subcontractual arrangements	The Register will include information relating to a provider's subcontractual arrangements. A lead provider may subcontract teaching of some or all of a course to a delivery provider or to another organisation. The lead provider remains responsible for the students studying at the delivery provider (subject to the effect of any condition of registration). The Register entry for the lead provider will include information about those providers delivering its courses under subcontractual arrangements.
The provider's right to use 'university' in its title*	The OfS has powers to authorise the use of 'university' or 'university college' in a provider's title. The OfS Register will state whether the provider has this right and, if so, when and how the right was granted.
Revocation of authorisation to use 'university' or 'university college' in the provider's title	The OfS has powers to revoke authorisation to use 'university' or 'university college' in a provider's title. When a provider remains registered after the revocation of such authorisation, the OfS will publish the timing and reasons for the revocation on the provider's entry on the Register. When a provider is deregistered after the revocation of such authorisation, it will no longer appear on the Register and information about the revocation will be recorded in the OfS's historic records.
Information about any Home Office student sponsor licence	The Register will confirm whether the provider holds a Home Office student sponsor licence to recruit students from outside the UK.
Information about the provider's primary regulator, where this is not the OfS	The Register will include information about the provider's primary regulator where this is not the OfS (for example the ESFA for further education and sixth form colleges).
A link to information designed to support prospective and current students to make informed study choices	The Register is not intended to be the primary place for students to find information about higher education providers and courses. Instead the Register will link to the provider's entry on the Discover Uni website so that users can find further information about a provider and its courses.

Requirements for initial registration

73. Section 3 of HERA states that the OfS must register a provider where it:

    a. Has applied to be registered in one of the categories of the Register.

    b. Is, or intends to become, an English higher education provider.

    c. Satisfies the 'initial conditions of registration' applicable to the relevant category of the Register.

    d. Has made a correct application that contains all of the required information.

Eligibility for registration

74. In order to be registered, a provider will need to demonstrate that it meets the definitions in HERA and the additional eligibility requirements set by the OfS. These are set out below.

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

    a. **Provision of higher education.** This is defined as delivering a course of any description listed in Schedule 6 to the Education Reform Act 1988.

    b. **English provider.** This is defined as a provider whose activities are carried on, or principally carried on, in England. 'Principally carried on in England' will be taken to mean that more than 50 per cent of a provider's higher education activities are carried on in England. In assessing where a provider's activities are carried on, the OfS will take 'activities' to mean the activities that support the provision of higher education, i.e. the delivery of teaching, designing of courses etc., not the learning (it is the location of the provision, not the location of students that will usually be the defining factor).

    c. **Institution**. A provider can only be registered if it is an institution providing higher education.[5]

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

    a. An institution is usually, but not necessarily, a distinct legal entity. This is therefore not a conclusive characteristic of an institution.

[5] A provider may be designated as 'an institution' by the Secretary of State under section 84 of HERA. Section 83 of HERA explicitly states that 'institution' includes training providers, as defined in that section. The exception are providers designated by the Secretary of State under section 84 of HERA.

b. An institution can consist of various component parts which together make up a single institution, even where each of the component parts could, or does, form a distinct legal entity.

77. An institution must be able to demonstrate that it can satisfy the initial and ongoing conditions of registration in its own right. Normally, this means that an institution will have all of the following characteristics, which will persist over time:

- its own name and brand identity, which makes it clearly distinguishable from other institutions or entities, to provide transparency for both students and the general public
- a clearly distinguishable student body for whose teaching the institution is responsible
- its own distinct governance structure, governing body and governing documents
- it will not be under the control of another entity which is itself registered with the OfS or which has applied to be so registered
- Its own separate, distinguishable finances that allow for the identification of the institution's income and expenditure, balance sheet and cash flow.

78. It will have all of the above characteristics for legitimate business reasons, a primary or dominant purpose of which is not to enable the entity to be separately registered in the OfS Register.

79. If a provider cannot demonstrate that it has all of these characteristics, it is unlikely to meet the eligibility criteria for registration. If a provider satisfies the majority, but not all, of the characteristics, the principles that the OfS will consider to determine whether an exception should be made, so that the provider is eligible, include, but are not limited to:

- whether separate registration of the provider would provide greater transparency and benefit for students
- if the institution has historically existed, and for how long
- whether it appears that the institution is being established with a purpose of avoiding regulation, or elements of it
- how far registration of the provider would allow for regulatory alignment with other government departments or agencies.

80. An entity (Entity A) will be under the control of another entity (Entity B) if any of the following applies:

- Entity B holds or is entitled to acquire a majority of the shares in Entity A
- Entity B holds or is entitled to acquire a majority of the voting rights in Entity A
- Entity B has or is entitled to acquire the right to appoint or remove a majority of the governing body of Entity A

- Entity B has or is entitled to acquire the right to exercise dominant influence over Entity A by virtue of provisions contained in either entity's constitution or in a contract, memorandum of understanding or other document regulating the entity. Such provisions may include, but are not limited to, the right to approve Entity A's business or financial plan or budget

- Entity B has or is entitled to acquire the right to a share of more than half the assets in the event of a winding up or in any other circumstances, or of more than half the income or profits, of Entity A

- Entity A is operated for the primary benefit of Entity B

- both entities are in common or overlapping ownership or managed on a uniform basis or have a significant number of governors (or the equivalent) in common

- Entity B has or is entitled to acquire the power, by any other means, to secure that the affairs of Entity A are conducted in accordance with the wishes of Entity B.

81. Where an entity is under the control of another entity the OfS expects that there will be transparency about the ownership, governance and financial viability and sustainability of the controlling entity to the extent that the OfS will be able to gain the same assurance from the controlling entity as it could from any English entity subject to UK laws.

82. Where there is a complex legal form, for example involving overseas control, the OfS may seek specialist advice including corporate intelligence and due diligence work from independent experts about these issues and may charge a fee to the provider for this work. If the fee is not paid, the OfS may decline to consider the application further. The OfS may apply a specific ongoing condition of registration if it is not satisfied that the same level of transparency and assurance over the controlling entity can be achieved as would be the case for any other entity subject to English law.

Providers not incorporated in England

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

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

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

86. In doing so, the OfS will consider principles including, but not limited to:

    a. Whether it has sufficient visibility of the provider's set up, corporate, control and ownership structures. This will, in particular, be relevant when assessing compliance with the conditions of registration that relate to management and governance (and financial sustainability, where a provider's corporate arrangements impact on financial data and information).

    b. Whether the feasibility of the provider's student protection plan is affected, for instance where funds are held overseas.

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

English providers with overseas activities

88. A provider that is based in England and meets the definition of an English higher education provider may also carry on some activity overseas, for example, by operating an overseas campus where it awards its own English degrees or by delivering distance learning provision to students based outside England. The OfS will regulate such overseas activity on the basis that the obligations of the registered provider extend to students for whom it is the awarding body wherever and however they study. The OfS would not regulate overseas activity where the registered provider is not the awarding body for students based outside England, for example, if it works in partnership with another awarding body that is not itself registered with the OfS. Where such unregulated activity exists, the OfS would, however, take into account any income or costs, or risks to management and governance, to which the registered provider is exposed in relation to any such activities or entities for the purposes of determining whether the registered provider satisfies its ongoing conditions of registration.

88A. For the avoidance of doubt, paragraph 88 is subject to the effect of any condition of registration.

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

89. Students ordinarily resident in England are eligible to claim student support when attending higher education courses delivered by providers in Scotland, Wales and Northern Ireland. This requires designation of the courses by the Secretary of State for Education under powers in the Teaching and Higher Education Act 1998 (THEA).

90. Under the current arrangements, where providers in Scotland and Northern Ireland are authority funded (i.e. in receipt of funding from the relevant regulator and subject to the associated assurance and compliance regimes), their courses receive automatic designation by way of regulations made under THEA. This process is operated on a reciprocal basis and will continue once the OfS's regulatory framework is fully implemented from 1 August 2019. This means that such providers are not eligible and so do not need to register with the OfS.

91. For students ordinarily resident in England to receive student support at courses delivered by non-authority funded providers in Scotland, Wales and Northern Ireland (i.e. alternative providers), the provider has to apply for specific course designation from the Secretary of State

for Education. These powers will remain in force and enable the designation of such courses for the academic years 2018-19 and 2019-20. This means that such providers are not eligible and so do not need to register with the OfS.

Initial conditions of registration

92. Each registration category has its own initial and ongoing conditions of registration. The conditions of registration for each category are designed to be proportionate taking into account the benefits of that category and the need to protect students.

93. A provider must demonstrate that it satisfies the initial conditions of registration applicable to the category of the Register in which it seeks registration. The OfS may specify different initial conditions of registration for different descriptions of provider, and for different categories of registration.

94. In developing the initial conditions of registration, the OfS has had regard to its general duties as set out in section 2 of HERA.

95. The initial conditions of registration are designed to mitigate the risk that the OfS is not able to deliver its four primary regulatory objectives. The conditions are 'baseline requirements', i.e. the minimum level a provider must achieve to be registered. The conditions are expressed in terms of the outcomes that the OfS wishes to see, rather than the particular approach that a provider might take to achieve such outcomes.

96. Annex A in Part V below sets out the initial conditions of registration and the categories of the Register to which they apply.

97. With the exception of any condition that expressly provides that it only has effect as an initial condition, each initial condition of registration will become a general ongoing condition of registration when a provider has been registered. This means that a provider is required to satisfy these conditions both as it seeks registration and on an ongoing basis throughout the duration of its registration.

98. With the exceptions of the requirements for access and participation, and for receipt of public grant funding, the initial conditions of registration for providers in each category are the same. This is because all students, regardless of the type or level of funding that their provider receives, should expect their provider to meet minimum baseline requirements.

Registration process

99. A provider seeking registration with the OfS must make a correct application that contains all the required information. The OfS has published guidance that sets out the information about a provider that it requires to be submitted in an application 'Regulatory Advice 2: Registration of current providers for 2019-20', and 'Regulatory Advice 3: Registration of new providers for 2019-20'.

100. With its application, a provider is required to submit evidence that demonstrates that it satisfies the initial conditions of registration that are applicable to the registration category for which it is applying. The OfS will also be entitled to use other evidence that is available to it in assessing the application. The full evidence requirements for current providers seeking

registration during 2018 are set out in guidance published in ‘Regulatory Advice 2: Registration of current providers for 2019-20’The full evidence requirements for new providers seeking registration from 2018 are set out in guidance here ‘Regulatory Advice 3: Registration of new providers for 2019-20’.

Assessment and risk assessment

101. The OfS will assess a provider’s application and relevant evidence to determine whether the provider satisfies the initial conditions of registration. The OfS may seek clarification and further information.

102. Where a provider is subject to the access and participation plan condition, there will be a process of negotiation between the Director for Fair Access and Participation and the provider before a plan is approved to ensure that the plan is sufficiently ambitious, strategic, evidence-informed, and appropriately resourced.

103. The OfS will carry out a formal risk assessment in relation to each of the ongoing conditions of registration in order to determine the extent of the risk that the provider will breach one or more of its general ongoing conditions. The risk of a future breach will be assessed taking onto account both the probability of a breach and the potential severity of its impact.

104. The OfS will consider the pattern of risk for the provider as a whole – across all ongoing conditions – to ensure that any regulatory intervention can be tailored specifically to the exact nature of any increased risk. The OfS will also seek to understand the underlying causes of any increase in risk, paying close attention to circumstances where an increased risk in one specific area, or a weak response to that risk, may indicate wider concerns about the provider, for example where there is a concern relating to governance arrangements.

105. The risk assessment of a provider will inform decisions about:

    a. Whether a provider can be registered.

    b. Which general ongoing conditions of registration are applied to the provider.

    c. Whether specific ongoing conditions of registration should be applied to the provider to mitigate areas of additional or increased risk.

    d. How the OfS intends to approach the ongoing monitoring of that provider.

106. The risk assessment undertaken at the point of registration will not be published on the OfS’s Register, but any specific conditions applied as a result of the risk assessment, and the reasons for this, will be published unless the OfS considers it inappropriate to do so.

107. When the OfS has determined that a provider is eligible for registration and that it satisfies the initial conditions of registration, the OfS will determine which general and specific ongoing conditions should apply to that provider. It will do this in accordance with the requirements of the registration category in which the provider will be registered and on the basis of its risk assessment.

108. HERA allows the OfS to decide that one or more of the general ongoing conditions of

registration may be disapplied for an individual provider when the provider is first registered or thereafter. In determining whether this would be appropriate, the OfS will give due consideration to those conditions that are fundamental to ensuring that student outcomes and interests are protected and that allow the OfS to carry out its regulatory function effectively.[6]

The expectation is that ongoing conditions will seldom be disapplied, as they are all closely aligned with protecting students.

109. If the OfS decides to register a provider it will list the provider in the relevant category of the Register.

Representations when the OfS intends to refuse registration

110. If the OfS intends to refuse an application for registration it must follow the procedure set out in HERA. The OfS must first notify the governing body of a provider of its intention to refuse registration and the reasons for this. It must set out the method and timeframe (which must not be less than 28 days from when notification is received) for the governing body of the provider to make representations about the intention to refuse to register the provider. The OfS must consider these representations before making its decision and must inform the provider of its decision. If the decision is to register the provider, the OfS will confirm the provider's date of entry to the Register and the ongoing conditions of registration that will apply. If the decision is to refuse registration, the OfS must set out the grounds for refusal.

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

Requirements to remain registered

Ongoing general conditions of registration

112. When the OfS grants an application for registration for a provider, it will apply:

    a. The mandatory general ongoing conditions of registration.

    b. The general ongoing conditions of registration that apply to the registration category for which the provider has applied.

    c. Any specific ongoing conditions of registration that the OfS considers desirable to mitigate increased risk of a future breach of general ongoing conditions.

113. To remain registered, a provider must continue to meet the definition of 'an English higher education provider' and must demonstrate that it satisfies the ongoing general conditions of registration applicable to the category of the Register in which it is registered. It must also satisfy any specific ongoing conditions that have been applied. Likewise, the OfS will have regard to its general duties in applying any ongoing specific condition of registration.

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

114. In developing the general ongoing conditions of registration, the OfS has had regard to its general duties as set out in section 2 of HERA.

115. The general ongoing conditions of registration, and the categories of the Register to which they apply, are set out in Annex A.

116. As with the initial conditions of registration, the general conditions in each of the approved categories are the same, with the exceptions of the requirements for access and participation and for receipt of public grant funding.

117. HERA allows the OfS to decide that one or more of the general ongoing conditions of registration may be disapplied for an individual provider when the provider is first registered or thereafter. In determining whether this would be appropriate, the OfS will give due consideration to those conditions that are fundamental to ensuring that student outcomes and interests are protected and that allow the OfS to carry out its regulatory functions effectively. The expectation is that ongoing conditions will seldom be dis-applied, as they are all closely aligned with protecting students.

The OfS's approach to risk assessment for registered providers

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

119. The sections that follow set out the OfS's approach to risk assessment and the way that this will operate for registered providers. In developing this approach the need to identify and respond to increased risk, before it crystallises and conditions of registration are breached, has been taken into account.

120. Underpinning this approach to risk assessment is an expectation that registered providers will behave responsibly, transparently and collaboratively. They will be expected to provide sufficient and reliable data and information on an ongoing basis (or as requested by the OfS to follow up on changes in a provider's risk profile). The OfS's approach will be based on cooperation with regulated providers, in the best interests of students.

121. Individual providers, that become aware of areas of increased risk, will be expected to bring these to the attention of the OfS before it becomes aware of these through its own monitoring processes. This includes the requirement to notify the OfS of particular 'reportable events' but also extends to any area in which the risk of a breach of an ongoing condition of registration has increased. The provider would not be expected to highlight all risks but to demonstrate sound judgement about when it considers that mitigation may not be sufficient to prevent a breach of an ongoing general or specific condition. If a provider fails to behave transparently the OfS will take the provider's behaviour into account in the context of the provider's ongoing management and governance condition.

Risk profile for an individual provider

122. The formal risk assessment carried out for a provider when it is first registered will be expressed in a risk profile covering each of the general ongoing conditions applicable to that

provider. The risk profile will be updated as necessary as a result of ongoing monitoring activity. Through this mechanism, the OfS will maintain an audit trail of its evolving assessment of risk for an individual provider and the actions taken in response to any increase or decrease in risk.

123. The individual risk profile will ensure that the OfS is able to focus its monitoring activity on any areas of increased risk and apply specific conditions of registration where these are deemed desirable to mitigate particular areas of risk. It will ensure that the OfS has a view of risk across all of the ongoing conditions that apply to an individual provider.

124. The OfS will pay particular attention to providers with a risk profile that suggests one or more of the following:

    a. An increased risk across a number of areas.

    b. An actual or possible breach of one or more of its ongoing conditions.

    c. A breach with a severe impact on students is more likely than is typical.

125. Such providers are likely to be subject to significant intervention by the OfS, until such time as increased risk has effectively been mitigated and/or a breach resolved.

126. OfS will not assign an overall summative 'risk rating' or classification for an individual provider (i.e. it will not divide providers into high risk/medium risk/low risk, or apply RAG ratings). Such an approach would artificially group providers with diverse types of risks and differing probability of a breach of conditions and would therefore not be a useful comparative tool.

127. The OfS does not intend to publish its risk assessments or the risk profiles for individual providers. Such information could be erroneously treated as equivalent to judgements on a provider's quality and have an unnecessary reputational impact. Publication could in fact be harmful to the OfS's ability to carry out its regulatory functions, for example, by creating confusion, giving providers insights that allow them a commercial advantage, or affecting the OfS's ongoing relationships with providers.

Monitoring of risk for registered providers

128. The OfS will monitor registered providers to ensure that any increased risk of a breach of one or more ongoing conditions of registration can be identified and decisive action taken before the risk crystallises into a breach, allowing the OfS to limit the exposure of students and taxpayers.

129. There are two levels of monitoring activity to allow the OfS to respond proportionately to the regulatory risks posed by regulated providers and enable early identification of changes in risk levels:

    a. General monitoring of all providers, based on:

        i. Lead indicators (indicators constructed from data and information flows, in as near real time as possible, that will assist the OfS to identify trends and anticipate future events).

ii. ‘Reportable events’ (a requirement to notify the OfS of material decisions/issues/changes).

iii. Other intelligence and information obtained by the OfS, such as from whistleblowing or student complaints.

b. Enhanced monitoring and/or engagement in areas in which:

i. Increased risk has been identified through an initial risk assessment or a revision to a risk assessment as a result of general monitoring.

ii. There has been a suspected or actual breach of one or more conditions of registration.

130. In addition, the OfS will use findings from its activities to monitor the higher education sector more broadly to inform its risk assessment for an individual provider or groups of providers.

131. Table 6 provides an overview of the range of measures which will inform the OfS’s monitoring of risk for registered providers.

Table 6 – Overview of monitoring of risk for registered providers

Type	Summary	Frequency
Risk assessment at point of registration	• Carried out when a provider's application to be registered in a particular category is assessed. • Expressed as an individual risk profile for a provider. • Used to inform decisions about whether more intensive monitoring and/or specific conditions of registration are required to mitigate areas of increased risk.	• Once for each provider at the point of initial registration.
General monitoring	Carried out for all registered providers on an ongoing basis. Informed by: • **lead indicators** (paras 136-142) • **reportable events** (paras 143-144) • **other intelligence and sources of information** e.g. whistleblowing and complaints (paras 145-146) Used to identify changes which may indicate a change in the risk of a provider breaching its ongoing conditions of registration.	• Reviewed for each provider on an ongoing basis as general monitoring takes place. • Reviewed for each provider as necessary on the basis of findings from **random sampling, efficiency studies** and **monitoring for wider purposes**.
Enhanced monitoring / engagement	• Carried out where an increased risk or suspected/actual breach of ongoing conditions by a provider is identified. • Based on a provider's risk profile, and OfS's **risk assessment**. • Only for providers assessed with increased risk of a future breach of one or more ongoing conditions of registration.	• Only for a provider assessed to be at increased risk. • At the frequency considered desirable to mitigate such risk for that provider.

Type	Summary	Frequency
Random sampling of providers	To provide assurance about the effectiveness of the OfS's **general approach to monitoring**. Not intended primarily to reassess risk for an individual provider, but will provide additional provider level information about risk.	
Efficiency studies	Section 69 of HERA gives the OfS the ability to ensure that higher education providers are delivering value for money for students and the taxpayer. Where **monitoring** or **random sampling** raises concerns about a provider's efficiency, the OfS may use this power as part of its risk-based approach.	
Monitoring for wider purposes	HERA statutory duties: • Section 68 – to monitor financial sustainability • Section 38 – to monitor student transfers OfS will rely on the data collected to compile its **lead indicators** and financial statements and forecasts used for **general monitoring**, to discharge its section 68 duty with no additional burden on providers envisaged.	

Approach to general monitoring

132. The approach to general monitoring is designed to identify where further investigation is necessary to identify whether risk has increased in any particular area for an individual provider. The OfS will use 'lead indicators' constructed from regularly obtained reliable data from providers and others, alongside 'reportable events' that providers must report to the OfS. It will also make use of wider strategic intelligence relating to the sector and/or individual providers, where appropriate, including whistleblowing and student complaints.

133. Where these sources of information suggest that further investigation is necessary, the OfS will engage with the provider to seek further information and make a judgement about whether the risk of a breach has increased. The OfS will consider whether action is necessary and being taken by the provider. The purpose of this dialogue will be to obtain assurance about whether the provider continues to satisfy its conditions of registration and to reassess the extent of the risk of a future breach. Regulatory intervention, such as the imposition of specific conditions, will not usually be taken only and immediately on the basis of the lead indicators themselves, but after the OfS has established through further assessment that the risk of a breach has increased. Sanctions will not be applied unless one or more conditions have been breached.

134. The OfS will not systematically reassess the compliance of each provider with each of its conditions of registration on a scheduled cyclical basis, other than as a result of random sampling. This targeted approach to monitoring allows the OfS to discharge its duty to have regard to the need to use its resources in an efficient, effective and economic way.

135. As it conducts its monitoring activities, the OfS will update as necessary the risk profile for an individual provider. For example, notification of a 'reportable event' would prompt a further risk assessment of that provider in relation to its ongoing conditions of registration.

Lead indicators

136. The OfS will identify a small number of lead indicators that will provide signals of change in a provider's circumstances or performance. Such change may signal that the OfS needs to consider whether the provider is at increased risk of a breach of one or more it its ongoing conditions of registration. These indicators will be based on regular flows of reliable data and information from providers and additional data sources, and will include information about outcomes for students from different backgrounds. Lead indicators are likely to include, but not be limited to, the following:

    - overall student numbers and patterns that might suggest unplanned and/or unmanaged growth or contraction
    - applications, offers and acceptances for students with different characteristics
    - changes in student entry requirements and the qualifications profile of students on entry.
    - continuation and completion rates
    - TEF performance
    - degree and other outcomes, including differential outcomes for students with different

characteristics, or where there is an unexpected and/or unexplained increase in the number of firsts and 2:1s awarded

- the number, nature or pattern of student complaints to the OIA
- graduate employment and, in particular, progression to professional jobs and postgraduate study
- composite financial viability and sustainability indicators based on annual financial statements and forecasts.

137. The lead indicators are likely to show changes that might not, in themselves, reveal areas of weakness or concern for an individual provider, but simply flag possible increased risk, such as a rapid increase or decrease in student numbers. The OfS will not use crude 'triggers' or performance thresholds to monitor risk, preferring a more flexible approach that takes into account the context for an individual provider.

138. Absolute performance against an indicator will form part of the overall context for assessing risk. For example, when monitoring continuation rates, a decrease for an individual provider could mean performance had worsened. However, levels of absolute performance need to be considered in the context of performance across the sector as a whole and might be considered to be of less concern in the wider context.

139. The OfS will seek to ensure that the selection and specification of lead indicators allow the identification of possible increased risk before this crystallises. Indicators that provide strong signals of likely future risk (for example significant shifts during the student recruitment cycle) and data trends over time will be more useful than data that retrospectively reveals where problems have already occurred (unless those problems have not previously been identified).

140. The OfS will ensure that its lead indicators allow it to monitor a provider's performance for all students from all backgrounds, for example by splitting student outcome indicators for different student characteristics. The OfS will also pay particular attention to outcomes achieved for students studying at different levels and in different modes (e.g. undergraduate/postgraduate).

141. The OfS will evaluate whether its selection of indicators remains effective in identifying increased risk, and will ensure the range of indicators provides sufficient coverage of the areas of regulatory concern. While the starting point is to use the same set of indicators for all providers, the OfS will consider whether different indicators should be used for providers with different characteristics.

142. The provision of reliable and timely data by providers to the OfS and the DDB is central to achieving a risk-based and proportionate approach to monitoring and regulation. The implementation of the OfS's data strategy may initially increase regulatory burden, but the long term aim is to use data to reduce regulatory burden. Such data requirements are not therefore intended as a regulatory burden on providers but to provide the information that allows the OfS to be an effective and proportionate regulator. It is anticipated that this data will be largely quantitative and generated as a result of a provider's existing management functions, minimising the burden on providers and allowing for greater consistency,

comparability and objectivity when looking across a range of providers. The OfS's data strategy will address these issues.

Reportable events

143. Providers will be required to notify the OfS of certain types of changes or events that would not usually be picked up by data flows alone. The OfS will publish guidance on the events it requires registered providers to report.

144. Reporting of such changes or events may prompt the OfS to undertake a reassessment of risk in relation to one or more of a provider's ongoing conditions of registration. The OfS will then use this risk assessment to determine whether any further regulatory action is required, such as the imposition of specific conditions of registration and/or increased monitoring. For example, the OfS might reassess the financial sustainability of a provider, and the effectiveness of governance arrangements, if it is notified that a merger is taking place. Similarly, in response to a change of ownership, the OfS would investigate the new owner, consider its suitability to own an English higher education provider, and reassess the risk presented by the provider.

Other sources of information about particular providers

145. The OfS will also draw on information volunteered by providers and others, including whistle blowers, as well as any wider experience it gains through other contact with that provider.

146. The OfS will seek input from students – this may be insights from lead indicators from the national student surveys, complaints raised with the OIA, or by inviting information from individual students and student bodies.

Random sampling

147. The OfS will seek confirmation that all systemic risks are being identified by its routine approach to the monitoring of individual providers. The OfS will operate a process to reassess providers' compliance with their ongoing conditions of registration and will do this for a random sample of providers each year.

148. Although random sampling will afford the OfS the opportunity to check risk or compliance with conditions at a provider level, its main purpose is to provide:

    a. **Assurance about the effectiveness of ongoing monitoring approaches** – by comparing findings from random sampling against findings from ongoing general monitoring, the OfS will better understand the effectiveness of its overall approach and decide whether changes to its approach might be required.

    b. **Incentives** – by moving from scheduled cyclical reviews to a random sampling approach, it is anticipated that providers will be incentivised to ensure that they satisfy conditions of registration on an ongoing basis.

    c. **Understanding of sectoral practice** – reviewing in detail how individual providers meet their conditions will help the OfS identify and recognise good practice.

149. The initial probability of a provider being identified by random sampling will be equal across all providers, regardless of risk assessment and the conditions (ongoing or specific) in place

for each of them. To maintain proportionality, no provider will be subject to further selection by random sampling if it has been sampled during the previous three years.

150. The OfS will begin by sampling five per cent of all registered providers each year. The probability of being assessed will increase incrementally for each year in which a provider is not sampled. The systemic benefits of uncertainty are intended to promote the desired provider behaviours, while creating a more proportionate system overall.

151. The sample pool will be categorised, with providers of different kinds grouped so that the sample in each year represents the diversity of the sector (e.g. by different legal forms or different categories on the Register).

152. The OfS will use the assessments undertaken through this process to confirm that a provider continues to satisfy its ongoing conditions of registration, to update the individual provider's risk profile, and to put in place any specific conditions or enhanced monitoring required. Through random sampling, the OfS will better understand the extent to which it is able to identify increased risk through monitoring. If significant new issues are identified by this process, the OfS will refine its overall approach to provider monitoring.

Efficiency studies

153. Section 69 of HERA enables the OfS to conduct efficiency and effectiveness studies in the management or operations of a registered provider. This is designed to allow the OfS to ensure that providers are delivering value for money for students and taxpayers.

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

Monitoring for other purposes

155. The OfS will undertake monitoring activity for purposes beyond its regulation of individual providers. For example, the OfS is required under section 38 of HERA to monitor student transfers, and under section 68 to monitor the financial sustainability of the sector. In collecting information for these purposes the OfS will, where possible, seek to rely on the same data and information, statements and forecasts collected for its routine monitoring of individual providers and will follow the general principles of proportionality.

156. Audited financial statements and financial forecasts will usually give the OfS sufficient data and information to monitor and report on the financial sustainability of the relevant providers. It is therefore not the intention to normally ask for any additional information or data from providers to enable the OfS to fulfil its duty under section 68 of HERA (there may be exceptions, such as when data returns are incomplete or unreliable).

157. When compiling the financial sustainability summary for its annual report, the OfS will take into account any wider developments and external factors it is aware of, such as changes in the costs of borrowing.

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

Exempt charity status

159. Most higher education providers hold charitable status. Some are registered with, and regulated directly by, the Charity Commission. However, many are 'exempt charities', exempt from registration with and direct regulation by the Charity Commission. Exempt charities have a Principal Regulator appointed whose duty is to promote compliance with charity law by the charities they regulate.

160. From 1 April 2018, the OfS will succeed HEFCE as the Principal Regulator for higher education providers that are exempt charities. The OfS will discharge its obligations as Principal Regulator as part of its routine monitoring activities.

Interventions

161. This section explains how the OfS will make use of its powers of intervention in circumstances in which it perceives there to be an increased risk of a provider breaching one or more of its ongoing conditions of registration, or when such a breach has occurred.

162. The OfS has a range of interventions at its disposal:

    a. Enhanced monitoring of providers.

    b. Imposition of specific ongoing conditions of registration.

    c. Imposition of formal sanctions:

        i. Monetary penalties.

        ii. Suspension from the Register.

        iii. Deregistration.

163. The use of the OfS's intervention powers will be subject to the requirements of its own internal governance arrangements.

164. The OfS may also use interventions that relate specifically to access and participation plans (refusal to agree a new access and participation plan) and degree awarding powers and university title (variation or revocation of degree awarding powers and revocation of university title).

165. The OfS will usually intervene when there is, or has been, a breach of an ongoing condition of registration, or when it perceives that the risk of a breach is increased. The OfS will use its risk assessment, and a provider's risk profile, in deciding whether an intervention is required and, if so, which form(s) that intervention should take. The

OfS's response will be proportionate and relevant to the risk it is seeking to mitigate. The OfS may only impose a sanction where there is, or has been, a breach of one or more of a provider's conditions of registration.

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

    a. **Prioritised:** the OfS will focus on matters that pose a risk of harm, especially to the interests of students or taxpayers.

    b. **Proportionate:** the OfS will take all the relevant circumstances into account and take action which is proportionate to the severity of the risk or breach, the culpability and behaviour of the provider, and the impact on students.

    c. **Targeted:** the OfS will take action to address the particular risks that are posed by the provider.

    d. **Transparent:** the OfS will clearly set out the intervention process, the action it is taking and the reasons for this. For entry and search, and specific ongoing conditions and sanctions, this will be as described in the relevant provisions of HERA and should include a provider's right to appeal. As set out above, in the section on the Register, the OfS will publish information about interventions for an individual provider.

    e. **Accountable:** the OfS will be accountable for the decisions it makes and explain to relevant providers the reasons for taking these decisions.

Intervention factors

167. The OfS will consider a range of factors before deciding whether to intervene, and if so, which form that intervention should take. Not all factors will be relevant in every circumstance, and the OfS will consider the relevant factors in the round when making its decision. The factors include:

    a. How significant the risk of a breach is, on the basis of its likelihood and the severity of the impact of the breach should it occur. An intervention is more likely where the OfS considers the risk of breach to be significant, or when a breach has already occurred.

    b. The actual or likely severity of the impact of a breach (either from a single instance or a number of instances). An intervention is more likely where: the impact on students is significant (e.g. student study is disrupted, there are breaches to the student contract, a large number of students are affected); the taxpayer's interests have been severely affected (costs have increased affecting value for money); or there is reputational damage to the sector as a whole (and considering fairness to providers that did comply).

    c. The impact of an intervention on students. Where the use of an intervention would

have a materially negative impact on students and their experience, the OfS is more likely to decide to use enhanced monitoring or a specific ongoing condition of registration to address the issue.

d. The nature of the increased risk or breach and whether a particular intervention would be effective in mitigating the risk or remedying the breach.

e. How the OfS became aware of the increased risk or breach. An intervention is more likely where the provider has not notified the OfS and the OfS has become aware from other sources, such as through its own regulatory activity, whistleblowing, or media reporting.

f. How long the underlying causes of the increased risk or the breach have existed and the extent to which these occurred deliberately or recklessly, or whether there is dishonesty involved. An intervention is more likely where the issues are longstanding, the provider has been deliberate or reckless or where issues have been concealed.

g. Steps taken by the provider to mitigate the increased risk or remedy the breach. An intervention is more likely to be used where a provider has not provided sufficient evidence that it has taken reasonable steps to mitigate an increased risk or prevent or remedy a breach.

h. The likelihood that a breach could happen again, including the provider's history of regulatory compliance. An intervention is more likely to be used where a provider has a history of non-compliance or the OfS has concerns that a breach could happen again.

i. The extent to which the provider cooperates with the OfS's investigations and enquiries. An intervention is more likely where a provider does not fully cooperate with the OfS.

j. Any gain (financial or otherwise) made by the provider as a result of the increased risk or the breach. An intervention is more likely where a provider has gained from increased risk or non-compliance.

k. The provider's behaviour. An intervention is more likely when increased risk of a breach or a breach is as a result of the provider acting deliberately or recklessly; failing to act, or acting dishonestly or seeking to cover-up information.

l. The action that the regulator has taken in previous similar cases. An intervention is more likely where the OfS has intervened in a previous similar case.

m. Any action taken by another regulator to remedy the increased risk or breach. An intervention is more likely to be used where an increased risk or a breach is not being remedied by another regulator's actions.

n. The extent to which any increased risk or breach has created a lack of confidence in the higher education sector. An intervention is more likely where action taken by

a provider or a group of providers has undermined confidence in the higher education sector and therefore affected providers that have complied.

Types of intervention

168. The OfS has a range of interventions available to it, described below. Alongside these interventions, there are other tools that the OfS will use to encourage compliance, but which are not considered direct 'interventions' for individual providers. For example, the OfS can ask for clarification or further information, and may publish any information that it deems relevant about an individual provider, or about the sector as a whole.

Enhanced monitoring and/or investigation

169. The OfS may put in place more frequent or more intensive monitoring requirements of a provider. For example:

    a. If the OfS considers a provider to be at increased risk of a breach of the financial viability and sustainability condition it could require the provider to submit copies of its monthly management accounts to allow the OfS to monitor the financial position more closely.

    b. If a provider is merging with another provider, the OfS may wish to discuss progress with the provider on a regular basis to identify any signs of increased risk.

170. The OfS may also take targeted action if it needs to establish the facts before reaching a judgement about whether there is, or is likely to be, a breach of one or more ongoing conditions of registration. Relying on general ongoing condition F3, the OfS:

    a. May require a provider to provide additional data or information to allow the OfS to assess the extent to which the risk of a breach has increased. In such circumstances, the OfS will notify the provider's governing body in writing of the additional data or information required, the reasons for this requirement, and what the data and/or information will be used for.

    b. Will allow a reasonable timescale for submission of this data or information. The timescale will be set following consultation with the provider where appropriate, and will be informed by the urgency of the circumstances, whether the provider has the data or information available or needs to collect or prepare it before supplying it to the OfS.

    c. May investigate specific concerns, which may involve, but not be limited to:

        i. Investigation using data audit or other appropriate methods.

        ii. Requiring information to be re-audited by a specified auditor, where the OfS has reasonable concern that the audit opinion does not provide the necessary assurance.

    d. May require the provider to take particular co-operative action by a specified

deadline – these actions may include access to, information (including data), records or people, to enable the OfS to investigate any concerns effectively and efficiently.

171. The OfS will aim to notify the provider of the outcome of any investigation and/or consideration of the provider's response within 15 working days of the conclusion of the investigation unless there are circumstances which mean that this is not possible.

Powers of entry and search

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

    a. That the OfS has reasonable grounds for suspecting that there is, or has been, a breach of a condition of registration or funding condition of the provider.

    b. That the suspected breach is sufficiently serious to justify entering the premises.

    c. That entry to the premises is necessary to determine whether the suspected breach is taking place or has taken place.

    d. That entry to the premises has been, or it is likely to be, refused or requesting entry may frustrate or seriously prejudice the purpose of entry.

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

Specific ongoing conditions of registration

174. The OfS may decide to impose a specific ongoing condition where it considers that a provider presents a specific risk that is not addressed by a general ongoing condition; to mitigate an increased risk that a provider may breach an ongoing condition of registration; or to prevent or remedy a breach. The specific ongoing condition will be targeted to mitigate the specific risk that is posed and will be focused on actions or activities by the provider that the OfS may require, or prohibit, to ensure that the provider is able to satisfy its ongoing conditions of registration.

175. The OfS could impose a variety of specific ongoing conditions on an individual provider. Some examples are set out below:

    a. To notify the OfS before a provider undertakes an activity/ takes action. For example, where a provider has had financial sustainability issues which have resulted in a dip in its surpluses, a specific ongoing condition could require that the

provider inform the OfS before it enters into large financial commitments.

b. To specify action to be taken before the provider can undertake an activity. For example, where there have been poor employability rates of students at a provider, a specific ongoing condition could require the provider to improve its employment outcomes before it can increase the number of students it recruits.

c. To limit a provider's activity. For example, where forecast student number growth risks having a significant negative impact on quality and the student experience due to the overstretching of a provider's finances and resources, a specific ongoing condition might require the provider to have a student number control.

d. To specify action to be taken to ensure that the provider makes sufficient progress towards agreed targets. For example, where a provider has set itself a target within its access and participation plan to increase access for a defined group of students, but is considered by the OfS to be neither making sufficient progress towards the target nor taking necessary action to make such progress.

176. Section 6 of HERA sets out the process by which the OfS will vary or remove a specific condition of registration, or impose a new specific ongoing condition. The OfS will notify the provider's governing body of its intention. This notification will include:

a. The reason for proposing to take the step in question

b. The period during which the governing body of the provider may make representations about the proposal, the way in which those representations may be made and the deadline for making any such representations (this will not be less than 28 days beginning with the date on which the notice is received).

177. If the provider's governing body makes any representations by the deadline, the OfS will have regard to these in deciding whether to vary, remove or impose the specific ongoing condition(s) of registration. The OfS will then inform the provider's governing body of its decision and the date when it takes effect. In addition, the OfS will inform the provider's governing body about:

a. How it will monitor the provider's compliance with any varied or new specific ongoing condition of registration.

b. What the provider needs to do, or not do, to provide the OfS with sufficient assurance and confidence to remove the condition.

Monetary penalties

178. The OfS is empowered by HERA to impose a monetary penalty instead of, or in addition to, other sanctions. This sanction may be appropriate where, for example, a provider has engaged in one of the following practices: deliberately or negligently breached its ongoing conditions of registration; been dishonest and concealed information; benefitted financially from failing to comply with its ongoing conditions of registration (for example by failing to ensure necessary resourcing); or had repeated

breaches. The OfS would take into account the severity of the impact of any monetary penalty, especially on the provider's students.

179. The Secretary of State will set out in regulations the matters to which the OfS must/must not have regard when imposing a monetary penalty and the penalty amount.

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

    a. The decision is based on a factual error.

    b. That it is wrong in law.

    c. That it is unreasonable.

181. There are four possible outcomes of an appeal. The Tribunal may:

    a. Withdraw the requirement to pay the penalty.

    b. Confirm that requirement.

    c. Vary that requirement.

    d. Remit the decision whether to confirm the requirement to pay the penalty, or any matter relating to that decision, to the OfS.

Suspension of registration

182. The OfS may decide to suspend a provider's registration (or suspend some of elements of its registration), in the event of a breach of an ongoing condition of registration, to immediately reduce the impact of the breach on students or taxpayers. During the suspension, the provider will be expected to take remedial action (secured through the imposition of specific conditions of registration), with the OfS lifting the suspension once it is satisfied that the breach has been remedied.

183. An example of where suspension might be appropriate is where a particular course has very weak continuation rates or with few students progressing to managerial or professional employment, or further study. Following investigation, it is apparent that changes need to be made to the course design. The provider has breached one of its ongoing conditions, but will be able to remedy the breach. To prevent more students from being affected, and to ensure that the provider takes action to remedy the breach,

the OfS may decide to suspend the provider's recruitment of new students to the relevant course until remedial action is taken.

184. The OfS will usually notify the provider's governing body of the intention to suspend its registration, including:

    a. The purposes for which the provider is not to be treated as a registered higher education provider during the suspensions.

    b. The remedial conditions that the provider needs to meet in order to restore registration.

    c. The period of time (not fewer than 28 days from receipt of the notification) to make any representations.

    d. The way in which representations may be made.

185. The OfS will have regard to any representations made by the deadline in deciding whether to suspend the provider's registration. The OfS will notify the provider's governing body of its final decision and this notification will include the date on which the suspension takes effect, the excepted purposes, the remedial conditions (if any) and confirmation as to the grounds for suspension.

186. Where the OfS considers there to be an urgent need to protect public money (e.g. due to the material risk of fraud or the misuse of public funds), the OfS will suspend registration with immediate effect and notify the governing body of the suspension – the notification will include the same information as required for OfS's notification of a final decision.

187. The suspension will remain in place for as long as is necessary to resolve the issues that led to the suspension. Resolution of these issues may be through further investigation (i.e. an intervention) and could lead to further sanctions, as appropriate, or restoration of registration.

Deregistration

188. HERA sets out the circumstances in which the OfS has the power to deregister a provider. One of the following two conditions must be met:

    a. Where the OfS has previously imposed a monetary penalty or suspended the provider in relation to a breach of one of its ongoing conditions of registration and it appears to the OfS that there is again a breach, or a continuing breach, of that condition or there is or has been a breach of a different condition.

    b. Where it appears to the OfS that there is, or has been, a breach of one of the provider's ongoing conditions of registration and that a monetary penalty or suspension is insufficient to deal with the breach.

189. The OfS may decide to deregister a provider where the risk to the student or taxpayer is so serious that using another sanction would not be sufficient. Before deciding to deregister a provider the OfS will consider, in particular, the impact of deregistration on the provider's students.

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

191. A provider may request to be removed from the Register on a voluntary basis, as set out in section 22 of HERA, for example, where a provider chooses to exit the market. In such cases, the governing body of the provider must formally apply to the OfS, setting out why it wishes to be deregistered and when it would like the deregistration to come into effect. The OfS will normally deregister the provider on the date requested, unless such a date gives insufficient time to deregister the provider in an orderly fashion and without impact on the provider's students. If the OfS is minded to alter the date of deregistration from that requested, it will usually seek to agree this with the provider. Under section 22 of HERA, the OfS must then remove the provider from the Register, but is obliged to keep a list of providers removed from the Register in this way. This will be part of other, historic information the OfS will make available.

192. If a provider is deregistered, or suspended from the Register to the extent that students cannot complete their courses, the provider's student protection plan would be triggered.

193. Where the OfS has determined that it is necessary to deregister a provider, it will notify the provider's governing body of the intention to remove its registration, including:

    a. The reasons for proposing to remove the provider from the Register.

    b. The period of time (not fewer than 28 days from receipt of the notification) to make any representations.

    c. The way in which representations may be made.

194. The OfS will have regard to any representations made by the deadline in deciding whether to remove the provider's registration. The OfS will notify the provider's governing body of its final decision and, if it decides to deregister the provider, this notification will include the date on which the removal takes effect and information about the grounds for removal, rights of appeal and the period within which the appeal may be made.

195. A provider that OfS is proposing to remove from the Register has a right of appeal against the decision itself and the date of removal from the Register. The provider may appeal to the First Tier Tribunal. A provider can make an appeal on the following grounds:

    a. That the decision was based on an error of fact.

    b. Was wrong in law.

    c. Was unreasonable.

196. There are four possible outcomes of an appeal. The Tribunal may:

a. Withdraw the removal.

b. Confirm the removal

c. Vary the date on which the removal takes effect

d. Remit the decision whether to confirm the removal, or any matter relating to that decision, to the OfS.

Refusal to approve an access and participation plan

197. Section 21 of HERA sets out a power for the OfS to refuse to approve an access and participation plan for a provider for a specified period after a plan that is currently in force has expired. This sanction may be applied where in the view of the OfS, the provider has failed to comply with a general provision of its current plan or with its mandatory fee limit condition. Section 12 of HERA states that a provider should not be regarded as having breached an equality of opportunity provision of its plan if it can show that it has taken all reasonable steps to comply with it.

198. The expectation is that, where the OfS has concerns in relation to access and participation plans, it will consider the intervention factors as set out above and will, in exceptional circumstances, consider use of the power to refuse to agree a new access and participation plan alongside its range of other interventions.

199. In those circumstances the OfS will notify the provider that it will refuse to approve a new plan after the current one comes to an end. That refusal may last for a period that the OfS specifies in a notice. The Secretary of State will make regulations about the matters the OfS must take into account in deciding whether or not to refuse to approve a plan, and the procedure it should follow when giving notice of refusal and the effect that the notice has.

Sanctions and interventions for providers with degree awarding powers and university title

200. HERA gives the OfS powers to vary or revoke degree awarding powers, and to revoke university title. These sanctions may be used regardless of how and when the provider obtained degree awarding powers or university title, and applies whether or not a provider is registered.

Transitional or Saving Provision (including teach out)

201. Should a provider be deregistered, the OfS may put in place transitional arrangements or a ‘saving provision’ in particular to protect the interests of students. This means that a provider may continue to be treated as a registered higher education provider following deregistration, for purposes specified by the OfS, for a transitional period. Such provision may allow a deregistered provider’s existing students to continue to access student support, where the quality and standards of the provider’s provision are adequate and it is in the students’ interest to remain at the provider. The provider would be required to meet its continuing obligations to its students for the ordinary duration of (or until withdrawal from) their course. This is called a ‘teach out’ period. Under these circumstances, the OfS will notify the governing body of its intention to allow the provider to continue to deliver courses to its current students for a specified period and

that no new students are allowed to be registered. The OfS will set out the conditions that will apply to the provider and the processes that it will need to follow during this specified period.

PART IV – Validation, degree awarding powers and university title

Validation

202. The OfS will undertake an assessment of the operation of the current validation system to identify any unnecessary barriers for providers seeking a validation partner, or any areas of current practice that are not in the interests of students. Where it is possible to intervene to remove or mitigate such barriers, and to ensure that students are protected, the OfS will take action at a sector-wide level. This might include increasing transparency of the operation of validation system or setting out exemplar validation arrangements to help informed negotiation between prospective validators and providers that seek validation. Where the OfS concludes that such interventions are not sufficient to secure improvements it deems necessary in the operation of the validation system, it will make use of its powers under section 50 of HERA to enter into commissioning arrangements. It may also ask the Secretary of State to make regulations under section 51 of HERA to authorise the OfS to enter into validation agreements with registered higher education providers itself.

Commissioning arrangements

203. The OfS has been granted powers to enter into commissioning arrangements with registered providers requiring those providers to offer to enter into validation arrangements in respect of some or all of the taught awards they are authorised to grant. For the purposes of section 50 of HERA, 'validation arrangements' are arrangements between one registered higher education provider and another registered provider under which the first provider:

    a. Grants a taught award to a person who is a student at the other provider.

    b. Authorises the other provider to grant a taught award on behalf of the first provider.

204. The OfS cannot force a provider to enter into a commissioning arrangement, and it will only enter into a commissioning arrangement with a provider that has the knowledge, experience, and intellectual capital to award the relevant qualifications. Such a provider must have the necessary degree awarding powers to award those qualifications.

205. To put in place commissioning arrangements, the OfS will:

    a. Seek expressions of interest from qualified registered providers willing to enter into a commissioning arrangement.

    b. Assess the expressions of interest against published criteria that include the appropriateness of the provider to address the gaps in validation provision that the OfS has identified.

    c. Select one or more suitable providers to provide the required validations services.

    d. Set out the terms and conditions that apply to the commission arrangements in a 'commissioning agreement' between the OfS and the selected provider.

206. The OfS may use its powers to fund registered providers under section 39 of HERA to incentivise appropriate providers to enter into commissioning arrangements.

Validation by the OfS

207. If authorised by regulations made under section 51, the OfS will consult on the most appropriate way in which to exercise this function. It is expected that the OfS would operate a validation service similarly to other validators, to the extent that this is consistent with any conditions in the regulations. Therefore, it is expected that the OfS would enter into contractual validation agreements with individual providers. Students would be taught by their provider, with the OfS having no involvement in day to day teaching. However, as the OfS will act as the degree awarding body, it will be responsible for the academic standards of any awards granted in its name, and for the quality of the academic experience.

Degree awarding powers (DAPs)

Legal basis for OfS authorisations

208. A provider that is currently authorised to grant taught awards, or research awards, or both, does not need to apply to the OfS to retain this authorisation.

209. The OfS may authorise a registered higher education provider to grant taught awards, or research awards, or both, under section 42 of HERA. Such an authorisation may allow a provider to grant:

    a. Taught awards or research awards of any description.

    b. Specified taught awards or research awards (e.g. BSc Maths).

    c. Taught awards or research awards of a specified description (e.g. only at bachelor level, or only in particular subject areas).

210. Only that particular registered institution (e.g. not a subsidiary of it) may apply for the powers in question.

211. The OfS may authorise providers to grant different types of degrees. Providers will be able to apply for authorisation to grant:

    a. Foundation degrees only (level 5 of the FHEQ).[7]

    b. Awards up to, and including, bachelor degrees (up to and including level 6).

[7] Only a registered provider that is also an English further education corporation may obtain a foundation degree only authorisation. An English further education provider is: (a) is an institution incorporated under Section 15 or 16 of the Further and Higher Education Act 1992 or which has become a further education provider by virtue of section 33D or 47 of that Act; (b) has been designated under Section 28 of that Act; or (c) is a sixth form college conducted by a sixth form corporation (as defined in section 191(1) of the Further and Higher Education Act 1992).

c. All taught awards (up to and including level 7).

d. Research awards (level 8 and research masters degrees at level 7).

212. Providers may apply for these authorisations on a subject specific basis, or covering all subjects.[8] Providers authorised to grant taught awards of any description will be authorised to grant all taught awards that fall within the definition set out in section 42(3) of HERA.[9]

OfS Orders

213. The OfS authorisation is in the form of an order which is also a statutory instrument. This order will set out the extent of the provider's authorisation, and, for example, whether there are any restrictions. The order will also state the date on which the authorisation takes effect and, if it is time limited, the period during which it has effect. The order can also contain incidental, supplementary, transitional and saving provision (see section 42(11) of HERA).

214. An authorisation may include powers that enable a provider to authorise other institutions to grant awards on its behalf. Similarly, an authorisation may contain restrictions in this area. An authorisation enables providers to make awards jointly with another institution; to revoke awards; to grant honorary degrees or degrees to members of staff. However, again, such powers may be subject to restrictions.

Criteria for authorisation for degree awarding powers

215. The criteria for authorisation for DAPs are designed to ensure that a provider with DAPs has demonstrated a firm guardianship of academic standards, a firm and systematic approach to the assurance of the quality of the higher education that it provides, and the capacity to contribute to the continued good standing of English higher education.

216. The overarching criterion for the authorisation for DAPs:

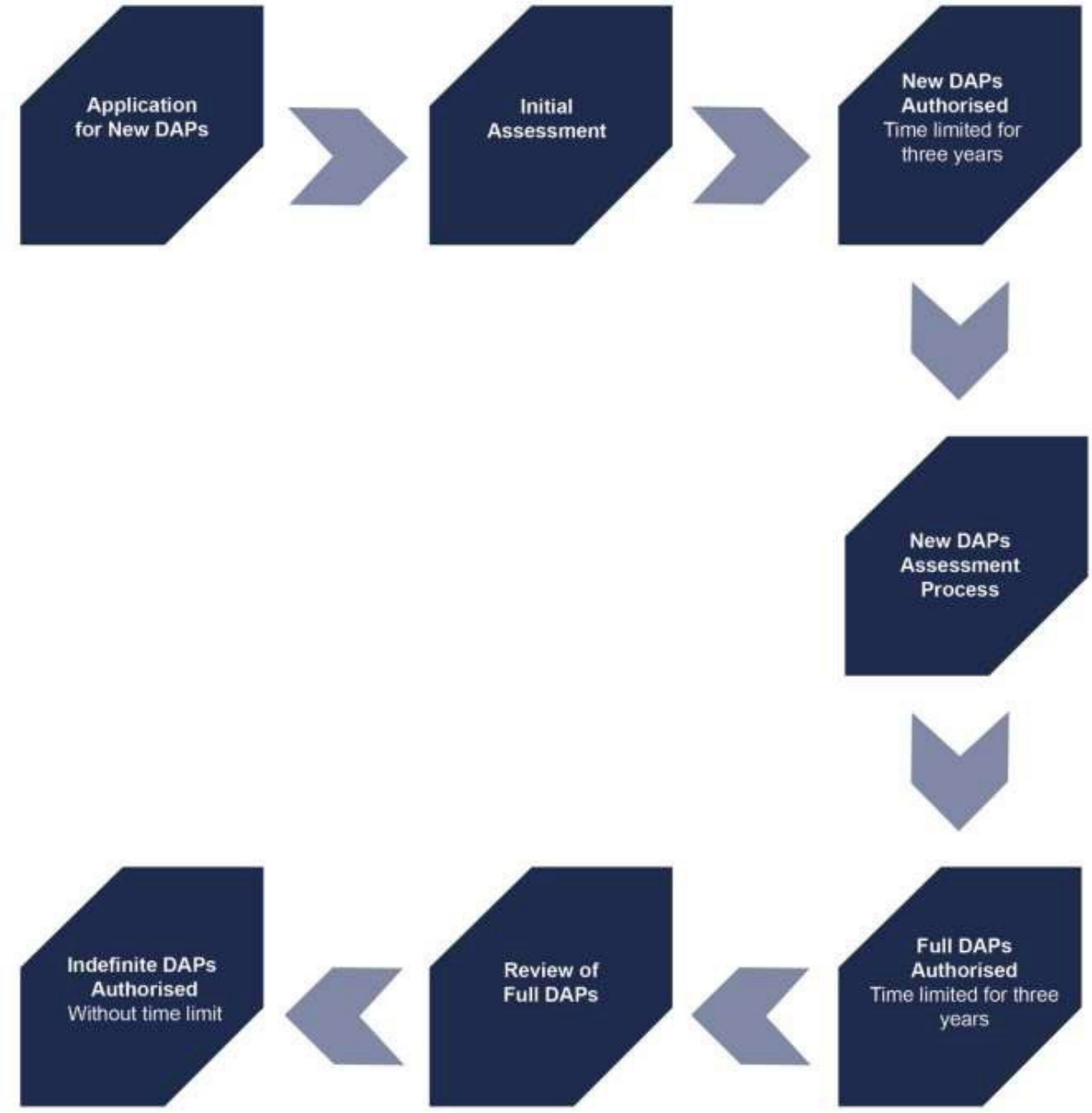
For New DAPs	An **emerging** self-critical, cohesive academic community with a **clear commitment** to the assurance of standards supported by effective **(in prospect)** quality systems
For Full DAPs	A self-critical, cohesive academic community with a proven commitment to the assurance of standards supported by effective quality systems

217. Guidance on the underpinning criteria for the authorisation for DAPs is set out in Annex C.

[8] Subject specific powers to grant research awards are expected to be rare.

[9] Foundation degree, diploma, certificate or other academic award or distinction granted to persons who complete an appropriate course of study and satisfy an appropriate assessment.

Providers that have been delivering higher education for less than three years (New DAPs)



Providers that have been delivering higher education for less than three years (New DAPs)

218. A provider that has been delivering higher education for less than three years does not have a sufficient track record to apply for Full DAPs authorisation. It may instead apply for authorisation on a probationary basis. This type of authorisation is referred to as 'New DAPs'. A provider that does have a sufficient track record to apply for Full DAPs authorisation may nevertheless apply for New DAPs if it prefers to do so.

219. A provider may seek authorisation for New DAPs for the following taught awards only:

    a. Foundation degrees only.[10]

    b. Awards up to, and including, bachelor degrees.

    c. All taught awards.

220. Providers may apply for these authorisations on a subject-specific basis, or covering all subjects.

221. To apply for New DAPs authorisation, a provider must:

    a. Be or become registered with the OfS.

    b. Satisfy all of its ongoing conditions of registration.[11]

    c. Normally have registered or intend[12] to register more than 50 per cent of its higher education students on courses at level 6 of the FHEQ or above, or at level 5 or above for foundation degree only authorisation.

222. The OfS will adopt the following approach to calculating student numbers for this purpose: Student numbers will be calculated using data collected by the DDB or in the Individualised Learner Record (ILR). The calculation will be based on intensity of study where a full time student will typically count as one, and a part time student will be treated as a proportion of a full time student. The calculation will only take into account students who are registered with the provider, rather than students registered with another provider but taught by the provider under a subcontractual arrangement. The OfS will publish a technical specification of the way it will perform this calculation.

223. For providers applying for authorisation for bachelor degrees only, the OfS may adopt a more flexible approach to the normal requirement that more than 50 per cent of its students are registered on level 6 courses. In these circumstances, the OfS will consider factors including, but not limited to, the number of level 6 courses delivered by the provider; the overall number of students studying on level 6 courses; the number or proportion of higher education

[10] Applications for New FDAPs are expected to be rare given that most providers in the FE sector will already have a track record of delivering level 5 qualifications.

[11] And, if it is a provider for which some conditions of registration are satisfied by assurances provided by the ESFA, for DAPs purposes, the provider must demonstrate that it is able to satisfy these conditions directly itself.

[12] This is only applicable if the provider is not yet providing higher education.

students who progress to level 6 courses and the views of the applicant's validating or subcontracting partner(s) about its suitability to hold DAPs.

224. A provider may apply for registration and for New DAPs authorisation at the same time, but the DAPs application will automatically be unsuccessful if the provider fails to satisfy the registration requirements.

225. A provider will only obtain New DAPs authorisation if it can demonstrate that it has the ability to operate securely as a degree awarding body and that there can be confidence that the awards it will make conform to recognised thresholds for standards and quality.

Application and initial assessment

226. A provider must make a correct application that contains all the required information, and includes the provider's New DAPs plan and supporting evidence. A provider seeking foundation degree only authorisation must also include in its application:

- a statement on progression, demonstrating that it is promoting clear progression routes for learners wishing to proceed to a course of higher-level study on completion of the foundation degree.

227. The OfS will published guidance that sets out the information that it requires to be submitted in an application.

228. The OfS will consider its existing risk assessment for the provider to determine the provider's suitability for DAPs. In particular, the OfS will consider its assessment of the provider's financial viability and sustainability, and its management and governance arrangements to ensure that the provider has understood and planned for the resources and governance necessary to set and maintain academic standards securely.

229. Where a provider is subject to one or more specific ongoing conditions of registration, and the OfS considers these to be relevant, for example because they have been imposed to mitigate increased risk of a breach of an ongoing condition relating to quality, standards, financial viability and sustainability, and management or governance, an application for New DAPs may be less likely to succeed.

230. A registered provider must have in place a student protection plan that has been agreed with the OfS. As part of its application for New DAPs, a provider must update and resubmit its student protection plan. This is to mitigate the risk to students that the provider's New DAPs authorisation may be revoked or not extended beyond the initial three-year authorization

231. The OfS will ask the DQB to undertake an initial assessment (the 'New DAPs test') when the OfS is satisfied that the provider:

a. Has submitted a correct application.

b. Meets the eligibility requirements set out in paragraph 221.

c. Appears to the OfS to be suitable for DAPs as set out in paragraphs 228 and 229 above.[12A]

d. Has in place a suitable student protection plan, agreed by the OfS.

e. Has provided a satisfactory progression statement as part of an application for foundation degree only authorisation.

232. The purpose of the New DAPs test is to:

a. Assess the credibility of the provider's New DAPs plan.

b. Assess the provider's understanding of the DAPs criteria.

c. Confirm that the standards set for the provider's proposed courses are at an appropriate level.

233. The New DAPs test will involve a visit to the provider and meetings with its governors and senior managers and with staff and students (where students are already registered). As a result of the New DAPs test, the DQB may require changes to the New DAPs plan to ensure that it provides a suitable basis for monitoring and assessment.

234. The outcome of the New DAPs test will be advice provided by the DQB to the OfS which will be one of:

- Ready now
- Not ready now.

235. In each case, the DQB will provide reasons and evidence for its advice.

236. The OfS will have regard to the advice and the supporting reasons and evidence provided by the DQB. Where the OfS accepts advice that a provider is 'ready now', it will make an order granting authorisation on a probationary basis for a three-year period. The provider will be required to implement its agreed probationary plan and to engage in monitoring and scrutiny activities during the probationary period. The OfS may impose specific conditions of registration in relation to the section 42 order.

237. Where the OfS accepts advice that a provider is 'not ready now', it will not make an order under section 42 of HERA and will provide the reasons for this decision. A provider may reapply for New DAPs and must set out in its new application the changes that it has made to address the reasons for its previous unsuccessful application. The OfS will determine whether or not it will accept an application in these circumstances.

238. A provider authorised by New DAPs will be subject to certain restrictions during the probationary period, in particular:

a. Entitlement to make awards to students only in the areas included in the provider's New DAPs plan. This may include intermediate awards for students who want to exit

[12A] See also paragraph 282B.

before completion of their programme.

b. No entitlement to validate or subcontract provision to other providers.

239. The OfS will exercise its functions so as to require a provider to always ensure that prospective and current students are aware of the status of the provider's New DAPs authorisation. The OfS Register will be clear that powers are held on a probationary basis.

240. The OfS will issue guidance on the way that the process for the authorisation and monitoring of New DAPs will operate.

Monitoring and assessment during the probationary period

241. From the date on which the New DAPs order takes effect, a provider is considered to be in its probationary period. During this period it is subject to monitoring by the OfS and by the DQB. The purpose of such monitoring is to:

a. Confirm that the provider is setting and maintaining academic standards securely – this will be monitored by the DQB.

b. Confirm that the provider is making sufficient progress in implementing its probationary plan to ensure that it will be able to demonstrate that it meets the DAPs criteria in full before the end of its probationary period – this will be monitored by the DQB.

c. Ensure that the provider's ongoing conditions of registration and any specific conditions of registration imposed by the OfS are met – this will be monitored by the OfS.

242. As part of this monitoring process, the provider will be required to provide regular reports, at least on a quarterly basis, on its progress in implementing its New DAPs plan to the DQB. The provider is also required to report to the DQB any issues that arise that may prevent it from implementing its plan as agreed. The DQB will undertake visits to the provider to verify the information it receives.

243. The DQB will provide a quarterly update to the OfS about the provider's progress during its probationary period. The OfS will take this information into account as it undertakes its routine monitoring activities for the provider. It will consider the use of its intervention powers, including the revocation of the New DAPs authorisation, if it considers that this is desirable in light of any of its primary regulatory objectives.

Outcome of the probationary period

244. Before the end of the probationary period, the DQB will undertake an assessment of the provider's arrangements against the Full DAPs criteria. The assessment will be designed to provide the same degree of confidence as the assessment of a provider seeking Full DAPs. The DQB will provide this assessment in its advice to the OfS together with its view about whether the provider has the ability:

a. To provide, and maintain the provision of, higher education of an appropriate quality.

b. To apply, and maintain the application of, appropriate standards to that higher education.

245. The OfS will have regard to the advice provided by the DQB. It may also seek, and have regard to, advice from others in relation to quality or standards. It will also consider its own risk assessment for the provider and will decide whether or not the provider meets the criteria for Full DAPs. The OfS may decide:

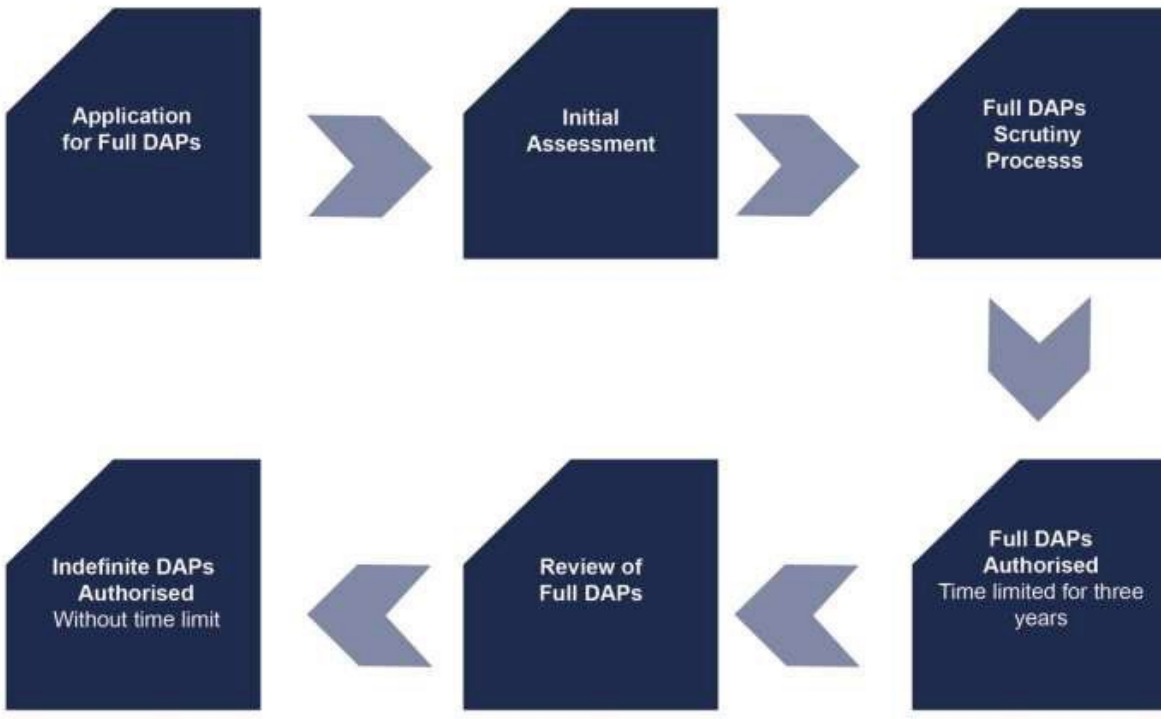
    a. That the provider meets the Full DAPs criteria. In such cases the OfS will vary the provider's DAPs authorisation to lift the probationary restrictions and to put in place a new time-limited order for Full DAPs authorisation which may also include restrictions.

    b. That the provider does not fully meet the DAPs criteria, but that it is likely to do so within the next 12 months. In such cases the OfS will extend the New DAPs authorisation for a period of not more than 12 months, at the end of which there will be a further assessment and decision about whether the provider does or does not meet the Full DAPs criteria. A New DAPs authorisation may only be extended in this way once.

    c. That the provider does not meet the DAPs criteria, and is unlikely to do so within the next 12 months. In such cases the OfS will either revoke the New DAPs order, or allow the order to expire, and require the provider to implement the provisions of its student protection plan.

246. Where the OfS decides that the provider does not meet the DAPs criteria it will provide the reasons for this decision. The OfS would, on request, review that it had followed its procedures correctly. A provider may reapply for New DAPs but it must set out in its new application the changes that it has made to address the reasons for its previous unsuccessful application. The OfS will determine whether or not it will accept an application in these circumstances.

Providers with a three year track record of delivering higher education



247. A provider that has been delivering higher education for three or more years may apply for full authorisation, with a time limit of three years. This type of authorisation is referred to as 'Full DAPs'. At the end of that period, the provider will be able to apply for an authorisation to grant awards without a time limit ('indefinite DAPs'). A provider may seek authorisation for Full DAPs for the following awards:

    a. Foundation degrees only;

    b. Awards up to, and including, bachelor degrees;

    c. All taught awards; and/or

    d. Research awards (if Full DAPs for taught awards are already held or are applied for at the same time).

248. Providers may apply for these authorisations on a subject-specific basis, or covering all subjects.

249. To apply for Full DAPs authorisation, a provider must:

    a. Be registered with the OfS.

    b. Satisfy all of its ongoing conditions of registration.[13]

    c. Have had no fewer than three consecutive years' experience, immediately preceding the year of application, of delivering higher education courses in England at a level at least equivalent to the level of the DAPs authorisation for which the provider is applying.

    d. Normally have registered more than 50 per cent of its higher education students on courses at level 6 of the FHEQ or above, or at level 5 or above for foundation degree only authorisation.

250. The OfS will adopt the following approach to calculating student numbers for this purpose: Student numbers will be calculated using data collected by the DDB or in the Individualised Learner Record (ILR). The calculation will be based on intensity of study where a full time student will typically count as 1, and a part time student will be treated a proportion of a full time student. The calculation will only take into account students who are registered with the provider, rather than students registered with another provider but taught by the provider under a subcontractual arrangement. The OfS will publish a technical specification of the way it will perform this calculation.

251. For providers applying for authorisation for bachelor degrees, the OfS may adopt a more flexible approach to the normal requirement that more than 50 per cent of its students are registered on level 6 courses. In these circumstances, the OfS will consider factors including, but not limited to, the number of level 6 courses delivered by the provider; the overall number of students studying on level 6 courses; the number or proportion of higher education

[13] And, if it is a provider for which some conditions of registration are satisfied by assurances provided by the ESFA, for DAPs purposes, the provider must demonstrate that it is able to satisfy these conditions directly itself.

students who progress to level 6 courses and the views of the applicant's validating or subcontracting partner(s) about its suitability to hold DAPs.

252. A provider may apply for registration and for Full DAPs authorisation at the same time, but the DAPs application will automatically be unsuccessful if the provider fails to satisfy the registration requirements.

Application and initial assessment

253. A provider must make a correct application that contains all the required information, and includes the provider's self-assessment against the DAPs criteria and supporting evidence. The provider must also provide evidence that it meets the three-year track record requirement for Full DAPs, for example by providing evidence of a validation agreement.

254. A provider seeking foundation degree only authorisation must also include in its application:

- a statement on progression, demonstrating that it is promoting clear progression routes for learners wishing to proceed to a course of higher level study on completion of the foundation degree.

255. The OfS has published guidance that sets out the information that it requires to be submitted in an application in 'Regulatory Advice 2: Registration of current providers for 2019-20', and 'Regulatory Advice 3: Registration of new providers for 2019-20'

256. The OfS will consider its existing risk assessment for the provider to determine the their suitability for DAPs. In particular, the OfS will consider its assessment of the provider's financial viability and sustainability, and its management and governance arrangements to ensure that the provider has understood and planned for the resources and governance necessary to set and maintain academic standards securely.

257. Where a provider is subject to one or more specific ongoing conditions of registration, and the OfS considers these to be relevant, for example because they have been imposed to mitigate increased risk of a breach of an ongoing condition relating to quality, standards, financial viability and sustainability, and management or governance, an application for Full DAPs may be less likely to succeed.

258. The OfS will ask the DQB to undertake an initial assessment when the OfS is satisfied that the provider:

a. Has submitted a correct application.

b. Meets the eligibility requirements set out in paragraph 249.

c. Appears to the OfS to be suitable for DAPs as set out in paragraphs 256 and 257 above.[13A]

d. Has provided a satisfactory progression statement as part of an application for foundation degree only authorisation.

259. The purpose of the DQB's initial assessment is to assess the credibility of the provider's self-

[13A] See also paragraph 282B.

assessment as the basis for the scrutiny process. The initial assessment will not normally involve a visit to the provider.

260. Where the DQB determines that the provider's self-assessment is suitable, it will notify the OfS that it intends to begin the scrutiny process.

261. Where the DQB determines that the provider's self-assessment is not suitable, it will provide such advice to the OfS and provide the reasons for this. The OfS will have regard to the advice from the DQB and, if agrees with the advice, will inform the provider that its application for Full DAPs has been unsuccessful. A provider may reapply for Full DAPs. If it does so within one year of the OfS's decision that an application was unsuccessful, it must set out in its new application the changes that it has made to address the reasons for its previous unsuccessful application. The OfS will determine whether or not it will accept an application in these circumstances

Monitoring and scrutiny process

262. The DQB will conduct a scrutiny process to assess the extent to which the provider's arrangements meet the DAPs criteria. The scrutiny process will extend over a number of months and will include visits to the provider and meetings with its governors and senior managers and with staff and students.

263. A provider that is already authorised to grant taught awards, including where such authorisation was not granted under section 42 of HERA, and that applies for RDAPs is required to provide evidence through the scrutiny process that it satisfies all the criteria for authorisation to grant taught awards and that it continues to meet these criteria. In the event, for example, that a provider that was authorised to make taught awards in specific subjects was to apply for authorisation to grant unrestricted research awards, the OfS would need to be satisfied that the applicant could satisfy the DAPs criteria for unrestricted taught awards as part of its consideration of an application for authorisation to grant unrestricted research awards.

264. The OfS will continue to undertake its routine monitoring activities in relation to the provider during the scrutiny process to ensure that the provider's ongoing conditions of registration and any specific conditions of registration imposed by the OfS are satisfied.

265. The DQB will notify the OfS of any issues that may arise during the scrutiny process that may affect the OfS's assessment of the risk of a breach of one or more of the provider's ongoing conditions of registration.

Outcome of the scrutiny process

266. At the end of the scrutiny process, the DQB will undertake an assessment of the provider's arrangements against the Full DAPs criteria. As it does so for applicants for authorisation for research degrees, its assessment will be informed by the views of UKRI. It will provide this assessment in its advice to the OfS together with its view about whether the provider has the ability:

    a. To provide, and maintain the provision of, higher education of an appropriate quality.

b. To apply, and maintain the application of, appropriate standards to that higher education.

267. The OfS will have regard to the advice provided by the DQB. It may also seek, and have regard to, advice from others in relation to quality or standards. It will also consider its own risk assessment for the provider and will decide whether or not the provider meets the criteria for DAPs. The OfS may decide:

    a. That the provider meets the relevant Full DAPs criteria. In such cases the OfS will make a time-limited DAPs order under section 42 of HERA and will decide whether any additional restrictions are necessary to the order.

    b. That the provider does not meet the relevant Full DAPs criteria. In such cases the OfS will not make an order under section 42 of HERA and will provide the reasons for this decision. The OfS would, on request, review that it had followed its procedures correctly.

268. Where the OfS makes a decision that a provider does not meet the relevant Full DAPs criteria, the provider may re-apply for Full DAPs but it must set out in its new application the changes that it has made to address the reasons for its previous unsuccessful application. The OfS will determine whether or not it will accept an application in these circumstances.

Variation and revocation of degree awarding powers

269. Under HERA, the OfS has express powers to vary or revoke DAPs to grant taught awards or research awards for an individual provider. These powers include the ability to vary or revoke DAPs where authorisation was originally made under Acts or Royal Charters.

270. This power might be used positively, for example, to make time-limited DAPs indefinite. The variation powers may also be used as a regulatory intervention where the OfS considers it appropriate, i.e. for the benefits of students to limit the scope of a provider's DAPs, for instance to bachelor only DAPs, or limit a provider's ability to validate provision elsewhere.

271. HERA provides that the OfS may revoke DAPs if certain conditions are met. There are three conditions, of which at least one must be met for the OfS to take the step of revocation. In the vast majority of scenarios, the OfS would expect to have made use of its other intervention powers before taking the step of revocation.

272. The OfS will exercise its functions so as to require a provider to ensure that where DAPs are varied or revoked, it must ensure that this is reflected in any advertising material, governing documents or other instances where these powers were set out or referred to, or where the authorisation was used. This means that where a provider has its powers set out in a Royal Charter or Private Act, it must amend these accordingly. If a provider fails to do so, the Secretary of State has powers under section 116 of HERA to make consequential changes.[14]

273. The OfS expects providers that already hold DAPs to be registered because having organisations with such powers operating outside of the regulated system could be a risk for students and the reputation of English degrees and universities. The OfS may therefore revoke DAPs if a provider does not register, or is deregistered.

[14] These powers cannot be used to revoke a Royal Charter in its entirety.

274. The conditions for revocation of DAPs are set out in sections 44 and 45 of HERA together with a detailed statutory process that the OfS must follow if it intends to vary or revoke DAPs, including requirements to:

    a. Notify the governing body of the provider of its intention, which must include:

        i. The OfS's reasons for proposing to take the step in question.

        ii. The period during which the governing body may make representations (which must be at least 28 days).

        iii. The way in which those representations may be made.

    b. Have regard to any representations.

    c. Notify the provider of its decision, including the date on which the variation or revocation takes effect, and the rights of appeal and period where they can be brought.

275. A provider may appeal to the First Tier Tribunal against any decision to vary or revoke DAPs.

276. Where an appeal relates to a decision to vary DAPs, or against the date at which a revocation of comes into effect, then the grounds for appeal are:

    a. That the decision was based on an error in fact.

    b. That the decision was wrong in law.

    c. That the decision was unreasonable.

277. If the appeal is against a decision to revoke DAPs, the grounds for appeal are not specified, and the First Tier Tribunal must consider the decision afresh, and may take into account evidence that was not available to the OfS.

Extending powers and review of powers

278. A provider that is granted DAPs of any type by the OfS will hold its award on a time-limited basis in the first instance. After three years of operating with an authorisation for Full DAPs, the provider will be subject to a review, which, if passed, would enable authorisation with no time limit. This is referred to as 'indefinite DAPs'.

279. The OfS will ask the DQB to undertake an assessment of the provider's arrangements against the Full DAPs criteria. This would not replicate the detailed scrutiny carried out when DAPs are first awarded, but is intended to confirm that the powers in question had been exercised securely during the preceding three years. As it does so for applicants for authorisation for research degrees, its assessment will be informed by the views of UKRI. The DQB will provide this assessment in its advice to the OfS together with its view about whether the provider continues:

    a. To provide, and maintain the provision of, higher education of an appropriate quality.

b. To apply, and maintain the application of, appropriate standards to that higher education.

280. The OfS will have regard to the advice provided by the DQB. It may also seek, and have regard to advice from others in relation to quality or standards. It will also consider its own risk assessment for the provider and will decide whether or not the provider continues to meet the criteria for DAPs. The OfS may decide:

a. That the provider continues to meet the relevant Full DAPs criteria. In such cases the OfS will vary the provider's DAPs order to remove the time limit under section 42 of HERA and will decide whether any additional restrictions are necessary to the order.

b. That the provider does not continue to meet the relevant Full DAPs criteria. In such cases the provider would remain with time-limited powers until such time as the concerns in question had been resolved. Where the OfS has significant concerns about the provider's ability to exercise DAPs securely, it may decide to vary or revoke the provider's DAPs authorisation.

281. A provider with time limited DAPs that has already successfully operated with DAPs for three years or more at 1 August 2019 will be able to seek indefinite DAPs on the same basis as providers that obtained their powers from the OfS. A provider that has successfully operated with DAPs for a period of less than three years at 1 August 2019 will be able to seek indefinite DAPs once it has completed the required three-year period.

Reportable events

282. A registered provider is required to notify the OfS of a 'reportable event' under ongoing condition of registration F3, the OfS will consider the implications of the reported event for the provider's DAPs authorisation. As part of its consideration of the reported event, the OfS will consider whether a review of DAPs is necessary. In particular, the OfS will determine whether the provider still meets the DAPs criteria and whether the institution holding DAPs is the same as that originally assessed and awarded DAPs.

Quality and standards conditions

282A. Where the OfS makes a final decision that there is, or has been, a breach of ongoing quality and standards conditions B1, B2, B3, B4 and/or B5,[14A] the OfS will consider using its power under section 16 of HERA to suspend the aspects of the provider's registration that relate to the authorisation of DAPs. The OfS would be likely to suspend the provider's eligibility to be authorised for new[14B] or extended[14C] DAPs.

282B. Alternatively, where the OfS makes a final decision that there is, or has been, a breach of ongoing quality and standards conditions B1, B2, B3, B4 and/or B5[14D] or where the OfS has imposed a specific condition of registration due to regulatory concerns relating to one or more

[14A] As revised in the quality and standards conditions set out in Part V of this document.

[14B] In this context 'new' means powers that the provider has not previously held, whether or not it seeks to hold those powers on a probationary basis.

[14C] For example, an order extending a provider's DAPs by time, level or subject.

[14D] As revised in the quality and standards conditions set out in Part V of this document.

of those conditions, the OfS may decide that the provider is not suitable to be authorised for new[14E] or extended[14F] DAPs.

282C. For information about how the OfS will treat a provider's compliance history in respect of conditions B1, B2, B4 and B5 in the context of DAPs decisions where a merger, acquisition or other corporate change occurs, see paragraph 372 of the 'Consultation on quality and standards conditions: Analysis of responses to consultation and decision' document.[14G] In respect of condition B3, see paragraph 643 of the 'Consultation on a new approach to regulating student outcomes: Analysis of responses to consultation and decisions' document.[14H]

Other awards

283. All awards made by a provider authorised to grant such awards by the OfS will be considered as recognised awards for the purposes of section 214 of the Education Reform Act 1988 and will not be subject to the offence of offering unrecognised degrees as set out in section 214. Under this section, as amended by section 53 of HERA, the OfS will be the appropriate authority in England, and as such, it will be responsible for the making of the recognised and listed bodies orders.

University title

Eligibility to apply for university college or university title

284. A higher education provider is eligible to apply for university college title when it:

    a. Is registered with the OfS.

    b. Satisfies all of its ongoing conditions of registration.

    c. Has obtained authorisation to grant taught awards (other than foundation degree only DAPs) or research awards and where that authorisation is not time limited.

285. A higher education provider is eligible to apply for university title when it meets the criteria for university college title above and, in addition, the following criterion:

    - The number of full time equivalent higher education students must exceed 55 per cent of the total number of full time equivalent students, of which at least 50 per cent must be on courses at level 6 or above on the Framework for Higher Education Qualifications.

286. The OfS will adopt the following approach to calculating student numbers for this purpose: Student numbers will be calculated using data collected by the DDB or in the Individualised

[14E] In this context 'new' means powers that the provider has not previously held, whether or not it seeks to hold those powers on a probationary basis.

[14F] For example, an order extending a provider's DAPs by time, level or subject.

[14G] See www.officeforstudents.org.uk/publications/consultation-on-quality-and-standards-conditions-outcomes/.

[14H] See www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/student-outcomes/.

Learner Record (ILR). The calculation will be based on intensity of study where a full time student will typically count as 1, and a part time student will be treated a proportion of a full time student. The calculation will only take into account students who are registered with the provider, rather than students registered with another provider but taught by the provider under a subcontractual arrangement. The OfS will publish a technical specification of the way it will perform this calculation.

287. For both university college and university title:

    a. A provider with time-limited Full DAPs, New DAPs, or foundation-only DAPs is not eligible.

    b. A provider that is part of the further education sector (i.e. an English further education provider as defined in section 83 of HERA) is not eligible to apply.[15]

    c. The registered provider making the application must be the same institution that was assessed for and granted degree awarding powers, and any university college or university title would only apply to this institution, and not to any different or wider corporate group or structure.

Application and assessment

288. A provider must make a correct application that contains all the required information. The OfS has published guidance that sets out the information that it requires to be submitted in an application ('Regulatory Advice 2: Registration of current providers for 2019-20', and 'Regulatory Advice 3: Registration of new providers for 2019-20'.)

289. A provider is not entitled to any particular name, and the OfS will have regard to the need to avoid names that are, or may be, confusing or misleading. A provider seeking university college or university title is required to consult, as set out in guidance by the OfS, on its proposed new name before making an application to the OfS and must provide evidence of this consultation in its application. The OfS will only approve names that it considers not to be, or not to have the potential to be, confusing or misleading. Should the OfS consider that a proposed name is confusing or misleading, the provider will be asked to choose and consult on a different name.

290. The OfS will assess whether the provider meets the criteria for university college or university title and will, in particular:

    a. Ensure that an applicant for university title meets the student number requirements.

    b. Determine whether the provider's chosen title may be, or may have the potential to be, confusing.

291. The OfS will consider its existing risk assessment for the provider to determine the provider's suitability for university college or university title. Where a provider is subject to one or more

[15] A further education corporation must apply to the Secretary of State to re-incorporate as a higher education corporation before becoming eligible to apply. A provider that is not a further education corporation, but is part of the statutory further education sector, would normally need to take any necessary steps to move out of this sector to become eligible to apply.

specific ongoing conditions of registration, and the OfS considers these to be relevant, for example because they have been imposed to mitigate increased risk of a breach of an ongoing conditions relating to quality, standards, financial viability and sustainability, and management or governance, an application for university college or university title may be refused for that reason.

292. Where the OfS decides that the provider meets the criteria for university college or university title, and its chosen name is suitable, the OfS will write to the provider inviting it to formally change its name. The processes for this differ depending on the legal form of the provider. Most providers will be able to change their name in their own governing documents, and to change their name with Companies House as required.

293. Where a provider is obliged to register or change a business or company name with Companies House, the OfS will provide a non-objection letter to the use of the word 'university' in the new name or within the provider's governing documents. This letter should be submitted to Companies House alongside the request to use the sensitive word 'university'.

294. Chartered bodies or providers with Private Acts must follow the relevant procedures to change their name. The precise requirements relating to changes to such governing documents are likely to vary, and providers that remain subject to any Privy Council oversight should contact the Privy Council Office.

295. Where the OfS considers that the criteria for university college title or university title have not been met, it will provide the reasons for this. The OfS would, on request, review that it had followed its procedures correctly. A provider may reapply for university college or university title once it has addressed the reasons for the previously unsuccessful application.

Revocation of university college title or university title

296. Under HERA, the OfS has express powers to revoke university college title and university title. This is irrespective of how the title was originally granted.

297. HERA provides that the OfS may revoke university college title and university title, but only if certain conditions are met. There are three conditions, of which at least one must be met for the OfS to take the step of revocation. In the vast majority of scenarios, the OfS would expect to have made use of its other intervention powers before taking the step of revocation.

298. The OfS will exercise its functions so as to require a provider to ensure that where its university college title or university title is revoked, it must change its name and ensure that this is reflected in any advertising material, governing documents or other instances where this title was set out or referred to, or where the name was used. This means that where a provider has its title set out in a Royal Charter or Private Act, it must amend these accordingly. If a provider fails to do so, the Secretary of State has powers under section 116 of HERA to make consequential changes.[16]

[16] These powers cannot be used to revoke a Royal Charter in its entirety.

299. The OfS will exercise its functions so as to require a provider to ensure that where a provider has a registered business or company name that includes the word ‘university’, and permission to the use of this word was granted as a result of the provider obtaining university title, the name in question must be changed to no longer include the word ‘university’.

300. The OfS expects providers with university college or university title to be registered because having organisations with such titles operating outside of the regulated system could be a risk for students and the reputation of English degrees and universities. The OfS may therefore revoke university college or university title if a provider does not register, or is deregistered.

301. The conditions for revocation of university college title and university title are set out in section 58 of HERA together with a detailed statutory process the OfS must follow if it intends to revoke such title, including requirements to:

    a. Notify the governing body of the provider of its intention, which must include:

        i. The OfS’s reasons for proposing to take the step in question.

        ii. The period during which the governing body may make representations (which must be at least 28 days).

        iii. The way in which those representations may be made.

    b. Have regard to any representations.

    c. Notify the provider of its decision, including the date on which the variation or revocation takes effect, and the rights of appeal and period where they can be brought.

302. A providers may appeal to the First Tier Tribunal against any decision to revoke university title.

303. Where an appeal relates to the date at which a revocation comes into effect, then the grounds for appeal are:

    a. That the decision was based on an error in fact.

    b. That the decision was wrong in law.

    c. That the decision was unreasonable.

304. If the appeal is against a decision to revoke university title, the grounds for appeal are not specified, and the First Tier Tribunal must consider the decision afresh, and may take into account evidence that was not available to the OfS.

Reportable events

305. Where a registered provider is required to notify the OfS of a ‘reportable event’ under ongoing condition of registration F3, the OfS will consider the implications of the reported event for the provider’s university title or university college title. As part of its consideration of the reported

event, the OfS will consider whether a review of the provider's suitability to hold university title or university college title is necessary. In particular, the OfS will determine whether the provider still meets the criteria for university college or university title as part of such a review.

306. The OfS will work to protect the meaning and concept of a university, and to ensure that providers cannot retain university title or university college title after structural changes that would undermine this. For example, if a university were to merge with a large further education provider, it may no longer be a predominantly higher education provider, and thus it would be misleading if it could continue to call itself a university. If it is no longer appropriate for a provider to call itself a university, the OfS will revoke university title.

Quality and standards conditions

306A. Where the OfS makes a final decision that there is, or has been, a breach of ongoing quality and standards conditions B1, B2, B3, B4 and/or B5,[16A] the OfS will consider using its power under section 16 of HERA to suspend the aspects of the provider's registration that relate to the authorisation of university or university college title. The OfS would be likely to suspend the provider's eligibility to be authorised for university or university college title.

306B. Alternatively, where the OfS makes a final decision that there is, or has been, a breach of ongoing quality and standards conditions B1, B2, B3, B4 and/or B5[16B] or where the OfS has imposed a specific condition of registration due to regulatory concerns relating to one or more of those conditions, the OfS may decide that the provider is not suitable to be authorised for university or university college title.

306C. For information about how the OfS will treat a provider's compliance history in respect of conditions B1, B2, B4 and B5 in the context of university or university college title decisions where a merger, acquisition or other corporate change occurs, see paragraph 372 of the 'Consultation on quality and standards conditions: Analysis of responses to consultation and decision' document.[16C] In respect of condition B3, see paragraph 643 of the 'Consultation on a new approach to regulating student outcomes: Analysis of responses to consultation and decisions' document.[16D]

307. [Not used]

[16A] As revised in the quality and standards conditions set out in Part V of this document.

[16B] As revised in the quality and standards conditions set out in Part V of this document.

[16C] See www.officeforstudents.org.uk/publications/consultation-on-quality-and-standards-conditions-outcomes/.

[16D] See www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/student-outcomes/.

PART V – Guidance on the general ongoing conditions of registration

Overview

308. HERA requires the OfS to publish, as part of its regulatory framework, guidance for registered higher education providers on the general ongoing conditions of registration. This will assist in determining whether or not behaviour complies with the general ongoing conditions of registration. It may, in particular, specify descriptions of behaviour that the OfS considers compliant with, or not compliant with, a general ongoing conditions of registration, and factors that the OfS will take into account in determining whether or not behaviour is compliant with a general ongoing condition of registration. This part of the regulatory framework sets out this guidance.

309. References to whether a condition is 'mandatory' or 'not mandatory' relate to whether the OfS is legally required to impose the condition (mandatory) or has discretion to impose the condition (not mandatory). For a provider, both mandatory and not mandatory conditions will be requirements where the OfS chooses to impose them as conditions of registration.

310. The general ongoing conditions of registration, and the categories of the Register to which they apply, are set out in Annex A.

Condition A1: Access and participation plan

Condition A1: An Approved (fee cap) provider intending to charge fees above the basic amount to qualifying persons on qualifying courses must:

i. Have in force an access and participation plan approved by the OfS in accordance with HERA.

ii. Take all reasonable steps to comply with the provisions of the plan.

Summary

Applies to: Approved (fee cap) providers charging fees above the basic amount.

Initial or general ongoing condition: initial and ongoing condition.

Legal basis: Section 12 of HERA – mandatory for those providers wishing to access the higher fee limits available in respect of the fee limit condition.

Guidance

Condition A1(i)

311. A 'qualifying course' means a course subject to the regulated undergraduate tuition fee regime: this includes those undergraduate courses and postgraduate initial teacher training courses for which Student Loan Company (SLC) student support may be provided.

312. An 'access and participation plan' means a document or documents complying with sections 30-32 and approved under section 29 of HERA.

313. To register in the Approved (fee cap) category and be able to charge fees above the basic amount to qualifying persons on qualifying courses subject to regulated undergraduate fees during an academic year for which the access and participation plan is in force, a provider must first have this plan approved by the OfS.

314. The Director for Fair Access and Participation, under authority delegated from the OfS board, has published guidance on priorities and expectations for access and participation plans, and the approach to approving them, in accordance with section 29(4) of HERA.

315. A provider will satisfy this condition by continuing to have an approved access and participation plan in force for any period in which it intends to charge fees above the basic amount.

Condition A1(ii)

316. In judging whether a provider has taken all reasonable steps to comply with the provisions of its plan, the OfS will have regard to:

    a. The progress made by the provider in delivering the objectives and targets in its plan.

    b. The approach and actions the provider has taken to deliver the provisions of its plan.

Assessment

317. During registration, the OfS will assess a provider's access and participation plan and will approve a plan that meets the OfS's requirements.

318. The OfS will monitor a provider's performance against the objectives and targets in its access and participation plan on the basis set out in 'Regulatory Notice 1: Guidance on access and participation plans for 2019-20'. Where the OfS is concerned that a provider may not have taken all reasonable steps to comply with the provisions of its plan it may request further information to assess the steps that have been taken by the provider and may make further interventions, including the imposition of a specific ongoing condition of registration to ensure that reasonable steps are taken and sufficient progress made.

319. Where the OfS determines that a provider has not taken all reasonable steps to deliver a general provision of its access and participation plan and so has breached this condition of registration, it may use its sanctions powers. In particular, it has the power under section 21 of HERA to notify a provider that it will refuse to agree a new access and participation plan for a period specified in the notice. Paragraphs 197-199 above set out the process for such a refusal.

Behaviours

320. In order to determine whether or not a provider is complying with this condition on an ongoing basis, the OfS's judgement will be informed by the provider's behaviour, as well as information submitted by the provider or available to OfS.

321. The following are non-exhaustive examples of behaviours that may indicate compliance with this general ongoing condition. The provider:

- has an approved plan in place
- is delivering the objectives and targets in its plan
- has a governing body that is appropriately engaged with monitoring of performance against the provisions of its plan
- is taking reasonable steps to comply with the provisions of its plan and has taken appropriate action where it appears that the intentions of the plan may not be delivered.

322. The following are non-exhaustive examples of behaviours that may indicate non-compliance with these general ongoing conditions. The provider:

- does not have an approved plan in force for any period in which the provider intends to charge fees above the basic amount
- has not put in place appropriate arrangements to monitor its performance against the provisions of its plan and/or has not taken appropriate action where it appears that the intentions of the plan may not be delivered.

Condition A2: Access and participation statement

Condition A2: An Approved provider or an Approved (fee cap) provider charging fees up to the basic amount to qualifying persons on qualifying courses must:

i. Publish an access and participation statement.

ii. Update and re-publish this statement on an annual basis.

Summary

Applies to: Approved (fee cap) providers charging fees up to the basic amount and all Approved providers.

Initial or general ongoing condition: initial and ongoing condition.

Legal basis: Section 5 of HERA.

Guidance

Condition A2(i)

323. An 'access and participation statement' means a statement published by the provider setting out its commitment to supporting access and participation in higher education by students from disadvantaged backgrounds and under-represented groups.

324. To register in either of the Approved categories and charge fees up to the basic amount for qualifying undergraduate courses, a provider must publish an access and participation statement.

325. It is for a provider to determine the content of its statement. The OfS expects that statements will be informed by a provider's circumstances and the characteristics and needs of its students. It will set out the provider's plans and achievements in this area. Unlike an access and participation plan, the content and ambition of a statement does not have to be approved by the OfS.

Condition A2(ii)

326. A provider will satisfy this condition by updating and republishing its statement each year.

Assessment

327. To satisfy the initial condition of registration a provider must develop its access and participation statement and provide this to the OfS as part of its application to register. The OfS will check that a statement has been published on the provider's website so that it is easily accessible for students and for anyone who might be seeking this information.

328. The OfS will check during its routine monitoring activities that a provider's statement has been updated and republished on an annual basis and that it is published in an accessible place.

Behaviours

329. In order to determine whether or not a provider is complying with this condition on an ongoing basis, the OfS's judgement will be informed by the provider's behaviour, as well as information submitted by the provider or available to OfS.

330. The following are non-exhaustive examples of behaviours that may indicate compliance with this general ongoing condition:

- the provider has published an up-to-date statement on its website
- the statement is accessible to current and future students and to the wider public.

331. The following are non-exhaustive examples of behaviours that may indicate non-compliance with these general ongoing conditions:

- the provider has not updated and republished its statement each year
- the statement is not accessible to current and future students and to the wider public.

Quality and standards conditions

General ongoing conditions of registration

Condition B1: Academic experience

Scope

B1.1 This condition applies to the quality of higher education 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).

Requirement

B1.2 Without prejudice to the principles and requirements provided for by any other condition of registration and the scope of B1.1, the provider must ensure that the students registered on each **higher education course** receive a high quality academic experience.

B1.3 For the purposes of this condition, a high quality academic experience includes but is not limited to ensuring all of the following:

a. each **higher education course** is **up-to-date**;

b. each **higher education course** provides **educational challenge**;

c. each **higher education course** is **coherent**;

d. each **higher education course** is **effectively delivered**; and

e. each **higher education course**, as appropriate to the subject matter of the course, requires students to develop **relevant skills**.

B1.4 Insofar as **relevant skills** includes technical proficiency in the English language, the provider is not required to comply with B1.3.e to the extent that it is able to demonstrate to the OfS, on the balance of probabilities, that its English language proficiency requirements, or failure to have English language proficiency requirements, for one or more students, are strictly necessary as a matter of law because compliance with B1.3.e in respect of that student, or those students:

i. would amount to a form of discrimination for the purposes of the Equality Act 2010; and

ii. cannot be objectively justified for the purposes of relevant provisions of that Act; and

iii. does not fall within an exception or exclusion provided for under or by virtue of that Act, including but not limited to provisions of the Act that relate to competence standards.

Definitions

B1.5 For the purposes of this condition B1:

a. "**appropriately informed**" will be assessed by reference to:

   i. the time period within which any of the developments described in the definition of **up-to-date** have been in existence;

   ii. the importance of any of the developments described in the definition of **up-to-date** to the subject matter of the **higher education course**; and

   iii. the time period by which it is planned that such developments described in the definition of **up-to-date** will be brought into the **higher education course** content.

b. "**coherent**" means a **higher education course** which ensures:

   i. there is an appropriate balance between breadth and depth of content;

   ii. subjects and skills are taught in an appropriate order and, where necessary, build on each other throughout the course; and

   iii. key concepts are introduced at the appropriate point in the course content.

c. "**educational challenge**" means a challenge that is no less than the minimum level of rigour and difficulty reasonably expected of the **higher education course**, in the context of the subject matter and level of the course.

d. "**effectively delivered**", in relation to a **higher education course**, means the manner in which it is taught, supervised and assessed (both in person and remotely) including, but not limited to, ensuring:

   i. an appropriate balance between delivery methods, for example lectures, seminars, group work or practical study, as relevant to the content of the course; and

   ii. an appropriate balance between directed and independent study or research, as relevant to the level of the course.

e. "**higher education course**" is to be interpreted:

   i. in accordance with the Higher Education and Research Act 2017; and

   ii. so as to include, for the avoidance of doubt:

      A. a course of study;

      B. a programme of research;

      C. any further education course that forms an integrated part of a higher education course; and

D. any module that forms part of a higher education course, whether or not that module is delivered as an integrated part of the course.

f. "**relevant skills**" means:

i. knowledge and understanding relevant to the subject matter and level of the **higher education course**; and

ii. other skills relevant to the subject matter and level of the **higher education course** including, but not limited to, cognitive skills, practical skills, transferable skills and professional competences.

g. "**up-to-date**" means representative of current thinking and practices in the subject matter to which the **higher education course** relates, including being **appropriately informed** by recent:

i. subject matter developments;

ii. research, industrial and professional developments; and

iii. developments in teaching and learning, including learning resources.

Summary

Applies to: all registered providers

Initial or general ongoing condition: general ongoing condition

Legal basis: section 5 of HERA

Guidance

Condition B1.1

332A. The reference to higher education 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, that postgraduate 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.

332B. This condition applies to any higher education 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.

332C. 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.

332D. 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.

332E. In practice, these provisions may result in more than one registered provider being responsible for compliance with this condition in relation to the same course.

Condition B1.3

332F. The subject matter of this condition includes matters that relate to the curriculum and pedagogy for higher education courses. The OfS would expect to draw on expert academic judgement, including from subject experts, before reaching a view that the condition was not satisfied in relation to such matters.

332G. The requirement of condition B1 is expressed as a principle that can be satisfied in different ways. To assist providers in understanding how the OfS may interpret this principles-based requirement in practice, the following paragraphs provide a small number of illustrative examples. These examples are not exhaustive.

332H. In relation to “up-to-date” and “appropriately informed”, the following is an illustrative non-exhaustive list of examples to demonstrate the approach the OfS may take to the interpretation of this condition:

a. The subject matter of a course is not representative of current thinking and practices. For example, course content, including topics and reading lists, that is not informed by research and scholarship, or does not reflect professional developments, such as the adoption of the latest professional or industry standards, would likely be of concern.

b. The pedagogy of a course is not representative of current thinking and practices. For example, a course delivered wholly or in part online that does not use pedagogy appropriate to digital delivery, would likely be of concern.

c. The length of the period during which aspects of the course have not been updated. For example, a course that has not been updated for a number of years such that its content or pedagogy do not reflect current rigorous academic thinking in that subject

area, or more generally, would likely be of concern. This may depend on the subject matter of a course, for example, for an accounting course, tax modules are likely to require frequent updating, whereas management accounting modules may need less frequent updating.

d. The scale and nature of the changes needed to ensure the course is up-to-date. For example, a course that requires significant changes to ensure its content or pedagogy reflect current rigorous academic thinking in that subject area, or more generally, would likely be of concern. Similarly, a course with an out-of-date core component would likely be of concern.

e. The impact on students and others of an out-of-date course. For example, a course that does not contain content that is required by a professional, statutory or regulatory body (PSRB), whether or not that course has recently been updated, would likely be of concern. The OfS would be particularly concerned about a course that was not up-to-date where this could reasonably be viewed as creating a risk to the public, for example a course that provided graduates with the recognition to practice medicine or to teach in schools.

f. Whether a provider has plans to make changes to a course to ensure it is up-to-date. For example, plans to make changes to a course that post-date the OfS's interest in that course are less likely to reduce concerns.

332I. In relation to "educational challenge", the following is an illustrative non-exhaustive list of examples to demonstrate the approach the OfS may take to the interpretation of this condition:

a. An integrated masters' course with a final year of study that does not provide sufficient rigour and difficulty, for example because students at different stages of the course are taught together in a way that does not recognise the different challenge needed, would likely be of concern.

b. An undergraduate degree course with an integrated foundation year, where the foundation year does not provide sufficient rigour and difficulty such that students are not prepared for successful study in the undergraduate course, would likely be of concern.

c. A research degree course that is focused on a research question that provides limited scope for original ideas would likely be of concern.

332J. In relation to "coherent", the following is an illustrative non-exhaustive list of examples to demonstrate the approach the OfS may take to the interpretation of this condition:

a. The content of a course is too narrow. For example, a three-year undergraduate degree that does not provide appropriate opportunity, in light of the course content, for students to study optional subjects beyond a mandatory core, either because the course was designed without such options, or because options are not in practice available, would likely be of concern.

b. The content of a course is too broad. For example, a 20 credit module that contains too much material for students to demonstrate the depth of understanding expected for the course, would likely be of concern.

c. Students are not secure in foundational topics. Students do not learn key, foundation concepts before moving onto more difficult topics, for example, a course that requires competence in mathematics does not teach these concepts before or alongside the topics they underpin would likely be of concern.

d. Practical or practice-based components are not taught in an appropriate order. For example, laboratory practical sessions are delivered in a disconnected way from related theory.

e. Skills are not taught at the right time. For example, research skills courses not being available for research students at the appropriate time before or during their research programme, would likely be of concern.

f. Module choices do not ensure students are able to construct a coherent pathway. For example, a course that offers students a wide choice of modules but where choices do not result in a coherent learning experience, would likely be of concern.

332K. In relation to “effectively delivered”, the following is an illustrative non-exhaustive list of examples to demonstrate the approach the OfS may take to the interpretation of this condition:

a. The range of learning activities is too narrow. For example, a course that is predominantly taught through large-scale lectures and does not provide opportunities for small group teaching would likely be of concern.

b. Learning activities are not delivered effectively. For example, insufficient opportunities for students to engage directly with teaching staff, including where parts of a course are delivered remotely, would likely be of concern.

c. The research environment does not support students’ learning. For example, a postgraduate research course without regular and effective supervision sessions, or without opportunities for structured engagement with other researchers, would likely be of concern.

d. Professional or practice-based elements are not integrated with academic elements. For example, an apprenticeship that does not require academic reflection on work-based learning would likely be of concern.

e. Assessment is not designed into the course. For example, assessment activities not being scheduled to consolidate students’ learning, or feedback not sufficient or timely to support learning, would likely be of concern.

332L. In relation to “relevant skills”, the following is an illustrative non-exhaustive list of examples to demonstrate the approach the OfS may take to the interpretation of this condition:

a. A course that does not require students to develop and demonstrate intellectual skills, such as evaluating evidence, mobilising an argument, and solving problems, consistent with the subject and level of the course, would likely be of concern.

b. A course designed to lead to a particular profession that does not require students to develop and demonstrate the skills necessary for success in that profession, for example, where specific skills are required for a relevant PSRB accreditation, would likely be of concern.

Condition B1.4

332M. In order to successfully rely on the exception in B1.4, the nature of the evidence a provider would need to put forward would go beyond articulating potential legal concerns or matters to which it has had regard in its decision-making and would require compelling evidence and reasoning on matters of law. As the exception in B1.4 only applies 'to the extent' that a provider can demonstrate a conflict with the Equality Act 2010, it would not be sufficient for a provider to put forward evidence and reasoning about its requirements (or absence of requirements) in general terms; rather, a provider would need to address the particular requirements (or absence of requirements) which it is seeking to justify under the exception, and the particular courses to which these relate.

332N. To give an example, citing this exception, a provider could seek to demonstrate that it is obliged, in order to avoid discrimination under the Equality Act 2010, to design its course requirements in a manner which makes certain allowances for students with dyslexia or other learning disabilities on some courses. If this was the case, the OfS would expect the provider to demonstrate, in the context of the particular courses at issue, that any allowances made were strictly necessary to avoid discrimination under the Equality Act 2010, with reference to compelling evidence and reasoning which supports this. The OfS expects that potential conflicts between requirements relating to English language proficiency and the Equality Act 2010 will only arise in rare cases, and therefore that this exception is likely to be invoked only in limited circumstances, for example in relation to students with particular learning disabilities.

Information gathering, assessment of evidence and enforcement

332O. The OfS will use its general risk-based approach to monitoring as set out in the regulatory framework.

332P. 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.

332Q. Where the OfS considers it appropriate to use its investigatory powers it may conduct an investigation itself, or may ask the designated quality body, or another appropriate body or individual, to gather further information it considers relevant. An investigation will normally involve a visit to the provider and interviews with relevant staff and students.

332R. 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.

332S. 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 is likely to require improvement, to mitigate the impact of poor performance on students, or to incentivise future compliance by this and other providers. The OfS will follow any statutory consultation process as it takes enforcement action.

332T. 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 and will also consider whether additional monitoring requirements are appropriate, for example, a requirement to report additional matters as reportable events.

332U. Where there is, or has been, a breach of this condition, or the OfS has imposed a specific condition of registration, the ways in which the OfS may take this into account include, but are not limited to, the following:

a. A provider's eligibility to participate in the TEF. The OfS will set out in its TEF guidance the way in which a provider's current and previous compliance with this condition may be taken into account in determining its eligibility to participate in the TEF.

b. A provider's existing TEF rating. The OfS will set out in its TEF guidance the way in which a provider's current and previous compliance with this condition may affect any existing TEF rating.

c. Regulation of degree awarding powers. Where the OfS makes a final decision that there is, or has been, a breach of this condition, or where the OfS imposes a specific condition of registration due to regulatory concerns under this condition, it will take that into account in the following ways:

    i. Where there is a finding that a breach of this condition has taken place or is ongoing, the OfS will consider using its power under section 16 of HERA to suspend the aspects of the provider's registration that relate to the authorisation

of DAPs and would be likely to suspend the provider's eligibility to be authorised for new or extended degree awarding powers.

ii. Alternatively, without using the power under section 16 of HERA, in circumstances where a finding has been made that a breach of this condition has taken place or is ongoing, the OfS may decide that the provider is not suitable to be authorised for new or extended DAPs. In a similar way, the OfS may also decide that the provider is not suitable to be authorised for new or extended DAPs where the OfS has imposed a specific condition of registration due to regulatory concerns relating to this condition.

The OfS would take this approach whether or not the authorisation sought is to gain new powers, or extend existing powers, for example by time, level or subject.

d. Regulation of university, and university college, title. Where the OfS makes a final decision that there is, or has been, a breach of this condition, or where the OfS imposes a specific condition of registration due to regulatory concerns under this condition, it will take that into account in the following ways:

i. Where there is a finding that a breach of this condition has taken place or is ongoing, the OfS will consider using its power under section 16 of HERA to suspend the aspects of the provider's registration that relate to the authorisation of university or university college title and would be likely to suspend the provider's eligibility to be authorised for university or university college title.

ii. Alternatively, without using the power under section 16 of HERA, in circumstances where a finding has been made that a breach of this condition has taken place or is ongoing, the OfS may decide that the provider is not suitable to be authorised for university or university college title. In a similar way, the OfS may also decide that the provider is not suitable to be authorised for university or university college title where the OfS has imposed a specific condition of registration due to regulatory concerns relating to this condition.

iii. The criteria for allocation of OfS public grant funding. In accordance with any separate OfS policies on matters relating to public grant funding, the OfS may decide to take account of a provider's current and previous compliance with this condition in determining allocations of some types of OfS public grant funding.

Condition B2: Resources, support and student engagement

Scope

B2.1 This condition applies to the quality of higher education 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).

Requirement

B2.2 Without prejudice to the principles and requirements provided for by any other condition of registration and the scope of B2.1, the provider must take all reasonable steps to ensure:

a. each **cohort of students** registered on each **higher education course** receives **resources** and **support** which are sufficient for the purpose of ensuring:

   i. a high quality academic experience for those students; and

   ii. those students succeed in and beyond higher education; and

b. effective **engagement** with each **cohort of students** which is sufficient for the purpose of ensuring:

   i. a high quality academic experience for those students; and

   ii. those students succeed in and beyond higher education.

B2.3 For the purposes of this condition, "all reasonable steps" is to be interpreted in a manner which (without prejudice to other relevant considerations):

a. focuses and places significant weight on:

   i. the particular academic needs of each **cohort of students** based on prior academic attainment and capability; and

   ii. the principle that the greater the academic needs of the **cohort of students**, the number and nature of the steps needed to be taken are likely to be more significant;

b. places less weight, as compared to the factor described in B2.3a., on the provider's financial constraints; and

c. disregards case law relating to the interpretation of contractual obligations.

Definitions

B2.4 For the purposes of this condition B2:

a. "**academic misconduct**" means any action or attempted action that may result in a student obtaining an unfair academic advantage in relation to an **assessment**, including

but not limited to plagiarism, unauthorised collaboration and the possession of unauthorised materials during an **assessment**.

b. "**appropriately qualified**" means staff have and maintain:

   i. expert knowledge of the subject they design and/or deliver;

   ii. teaching qualifications or training, and teaching experience, appropriate for the content and level of the relevant **higher education course**; and

   iii. the required knowledge and skills as to the effective delivery of their **higher education course**.

c. "**assessment**" means any component of a course used to assess student achievement towards a **relevant award**, including an examination and a test.

d. "**cohort of students**" means the group of students registered on to the **higher education course** in question and is to be interpreted by reference to the particular academic needs of those students based on prior academic attainment and capability.

e. "**engagement**" means routine provision of opportunities for students to contribute to the development of their academic experience and their **higher education course**, in a way that maintains the academic rigour of that course, including, but not limited to, through membership of the provider's committees, opportunities to provide survey responses, and participation in activities to develop the course and the way it is delivered.

f. "**higher education course**" is to be interpreted:

   i. in accordance with the Higher Education and Research Act 2017; and

   ii. so as to include, for the avoidance of doubt:

      A. a course of study;

      B. a programme of research;

      C. any further education course that forms an integrated part of a higher education course; and

      D. any module that forms part of a higher education course, whether or not that module is delivered as an integrated part of the course.

g. "**physical and digital learning resources**" includes, as appropriate to the content and delivery of the **higher education course**, but is not limited to:

   i. physical locations, for example teaching rooms, libraries, studios and laboratories;

ii. physical and digital learning resources, for example books, computers and software;

iii. the resources needed for digital learning and teaching, for example, hardware and software, and technical infrastructure; and

iv. other specialist resources, for example specialist equipment, software and research tools.

h. "**relevant award**" means:

i. a **research award**;

ii. a **taught award**; and/or

iii. any other type of award or qualification in respect of a **higher education course**, including an award of credit granted in respect of a module that may form part of a larger **higher education course**,

whether or not granted pursuant to an authorisation given by or under the Higher Education and Research Act 2017, another Act of Parliament or Royal Charter.

i. "**research award**" and "**taught award**" have the meanings given in section 42(3) of the Higher Education and Research Act 2017.

j. "**resources**" includes but is not limited to:

i. the staff team that designs and delivers a **higher education course** being collectively **sufficient in number**, **appropriately qualified** and deployed effectively to deliver in practice; and

ii. **physical and digital learning resources** that are adequate and deployed effectively to meet the needs of the **cohort of students**.

k. "**sufficient in number**" will be assessed by reference to the principle that the larger the cohort size of students, the greater the number of staff and amount of staff time should be available to students, and means, in the context of the staff team:

i. there is sufficient financial resource to recruit and retain sufficient staff;

ii. the provider allocates appropriate financial resource to ensuring staff are equipped to teach courses;

iii. **higher education courses** have an adequate number of staff, and amount of staff time; and

iv. the impact on students of changes in staffing is minimal.

l. "**support**" means the effective deployment of assistance, as appropriate to the content of the **higher education course** and the **cohort of students**, including but not limited to:

i. academic support relating to the content of the **higher education course**;

ii. support needed to underpin successful physical and digital learning and teaching;

iii. support relating to understanding, avoiding and reporting **academic misconduct**; and

iv. careers support,

but for the avoidance of doubt, does not include other categories of non-academic support.

Summary

Applies to: all registered providers

Initial or general ongoing condition: general ongoing condition

Legal basis: section 5 of HERA

Guidance

Condition B2.1

332V. The reference to higher education 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, that postgraduate 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.

332W. This condition applies to any higher education 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.

332X. 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.

332Y. 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.

332Z. In practice, these provisions may result in more than one registered provider being responsible for compliance with this condition in relation to the same course.

Condition B2.3

333A. The requirement of condition B2 is expressed as a principle that can be satisfied in different ways. To assist providers in understanding how the OfS may interpret this principles-based requirement in practice, the following paragraphs provide a small number of illustrative examples. These examples are not exhaustive; nor are they provided as rules that, if followed, would constitute compliance with the condition.

333B. “Cohort of students” includes students registered on postgraduate research courses, whether or not those courses are designed for students to study and progress as ‘a cohort’.

333C. “Academic misconduct” includes presenting work for assessment that is not the work of the student being assessed and includes but is not limited to the use of services offered by an essay mill.

333D. Where the condition contains requirements that relate to the staff team for a course, the OfS’s focus is likely to be on the staff team as a whole, rather than on individuals within that team. The staff team includes individuals employed by a provider or otherwise deployed to teach on a course.

333E. The following is an illustrative non-exhaustive list of examples that would not be likely to satisfy these requirements:

a. A staff team comprised solely of inexperienced teachers is not likely to be appropriately qualified.

b. A staff team with narrow collective expertise in a subject area is not likely to be appropriately qualified if the range of options available to students extend beyond that collective expertise.

c. A staff team in which none of the individuals hold a teaching qualification or have been trained to undertake teaching is not likely to be appropriately qualified.

d. A staff team that is over-reliant on visiting teachers to deliver large or significant elements of a course is not likely to be appropriately qualified.

e. A staff team that does not conduct research at the forefront of relevant discipline(s) is not likely to be appropriately qualified to provide supervision to research students.

333F. Where the condition contains requirements that relate to learning resources, a provider is expected to fund the provision of these resources, without additional charge beyond the course fee, where this is a reasonable step to take to ensure that the cohort of students registered on a course receive sufficient resources for the purpose of ensuring a high quality academic experience and success in and beyond higher education. A provider may determine the approach it takes to making such resources available to students, for example, by loaning resources to students for the duration of the course.

333G. In relation to “physical and digital learning resources” the following is an illustrative non-exhaustive list of matters relating to ‘physical learning resources’ that would fall within the definition:

a. Appropriate laboratory and technical resources for STEM subjects.

b. Appropriate studio, performance, and technical resources for creative subjects.

333H. In relation to “physical and digital learning resources” the following is an illustrative non-exhaustive list of matters relating to ‘digital learning resources’ that would fall within the definition:

a. Appropriate hardware. Students have, or have reliable and consistent access to, the hardware that allows them to effectively access all course content. Hardware is of the specification required to ensure that the student is not disadvantaged in relation to their peers.

b. Appropriate software. Students have, or have reliable and consistent access to, the software they need to effectively access all aspects of course content.

c. Robust technical infrastructure. Technical infrastructure and systems work seamlessly and are repaired promptly when needed.

d. Reliable access to the internet. Students have reliable and consistent access to an internet connection. Reliability and bandwidth of the internet connection are at a sufficient level to ensure that a student is not disadvantaged in relation to their peers.

e. A trained teacher or instructor. Students have a trained teacher or instructor who is equipped to deliver high quality digital teaching and learning.

f. An appropriate study place. Students have consistent access to a quiet space that is appropriate for studying.

333I. In relation to “support” the following is an illustrative non-exhaustive list of matters that would fall within this definition:

a. Academic support includes support to help students with course content or on placements, to identify and address knowledge or skills gaps, and make decisions about future study choices. It includes, for example, mentor support that disabled students may need to support their learning.

b. Support needed to underpin successful physical and digital learning and teaching includes support to help students make best use of digital learning.

c. Support relating to avoiding academic misconduct includes support for essay planning and accurate referencing, and advice about the consequences of academic misconduct.

d. Careers support includes the information, advice and guidance students need to identify their capabilities and the way in which these may be suited to particular careers, and to articulate these in a way likely to result in successful job applications.

333J. "Support" does not include other categories of non-academic support, for example, the provision of welfare and counselling services for students.

333K. In relation to "engagement" the following is an illustrative non-exhaustive list of examples to demonstrate the approach the OfS may take to the interpretation of this condition:

a. Membership of, and effective contribution to, the provider's committees. An absence of student membership of, or effective contribution to, a provider's governing body may be of concern, depending on the size and corporate structure of the provider. An absence of student membership of, or effective contribution to, a provider's committees responsible for academic governance and learning and teaching would likely be of concern. An absence of student membership of, or effective contribution to, learning and teaching committees, or course-level committees, in a subject area, or department, would likely be of concern.

b. Student feedback. Students not given a range of opportunities, either individually or collectively, to provide feedback on their course and the way it is delivered would likely be of concern.

c. Maintaining academic rigour. Changes, as a result of student feedback provided through any mechanism, to the content of a course, or the way the course is delivered or assessed that, in the reasonable view of the OfS do not maintain the academic rigour of the course would likely be of concern.

Information gathering, assessment of evidence and enforcement

333L. The OfS will use its general risk-based approach to monitoring as set out in the regulatory framework.

333M. 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.

333N. Where the OfS considers it appropriate to use its investigatory powers it may conduct an investigation itself, or may ask the designated quality body, or another appropriate body or individual, to gather further information it considers relevant. An investigation will normally involve a visit to the provider and interviews with relevant staff and students.

333O. 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.

333P. 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 is likely to require improvement, to mitigate the impact of poor performance on students, or to incentivise future compliance by this and other providers. The OfS will follow any statutory consultation process as it takes enforcement action.

333Q. 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 and will also consider whether additional monitoring requirements are appropriate, for example, a requirement to report additional matters as reportable events.

333R. Where there is, or has been, a breach of this condition, or the OfS has imposed a specific condition of registration, the ways in which the OfS may take this into account include, but are not limited to, the following:

a. A provider's eligibility to participate in the TEF. The OfS will set out in its TEF guidance the way in which a provider's current and previous compliance with this condition may be taken into account in determining its eligibility to participate in the TEF.

b. A provider's existing TEF rating. The OfS will set out in its TEF guidance the way in which a provider's current and previous compliance with this condition may affect any existing TEF rating.

c. Regulation of degree awarding powers. Where the OfS makes a final decision that there is, or has been, a breach of this condition, or where the OfS imposes a specific

condition of registration due to regulatory concerns under this condition, it will take that into account in the following ways:

i. Where there is a finding that a breach of this condition has taken place or is ongoing, the OfS will consider using its power under section 16 of HERA to suspend the aspects of the provider's registration that relate to the authorisation of DAPs and would be likely to suspend the provider's eligibility to be authorised for new or extended degree awarding powers.

ii. Alternatively, without using the power under section 16 of HERA, in circumstances where a finding has been made that a breach of this condition has taken place or is ongoing, the OfS may decide that the provider is not suitable to be authorised for new or extended DAPs. In a similar way, the OfS may also decide that the provider is not suitable to be authorised for new or extended DAPs where the OfS has imposed a specific condition of registration due to regulatory concerns relating to this condition.

The OfS would take this approach whether or not the authorisation sought is to gain new powers, or extend existing powers, for example by time, level or subject.

d. Regulation of university, and university college, title. Where the OfS makes a final decision that there is, or has been, a breach of this condition, or where the OfS imposes a specific condition of registration due to regulatory concerns under this condition, it will take that into account in the following ways:

i. Where there is a finding that a breach of this condition has taken place or is ongoing, the OfS will consider using its power under section 16 of HERA to suspend the aspects of the provider's registration that relate to the authorisation of university or university college title and would be likely to suspend the provider's eligibility to be authorised for university or university college title.

ii. Alternatively, without using the power under section 16 of HERA, in circumstances where a finding has been made that a breach of this condition has taken place or is ongoing, the OfS may decide that the provider is not suitable to be authorised for university or university college title. In a similar way, the OfS may also decide that the provider is not suitable to be authorised for university or university college title where the OfS has imposed a specific condition of registration due to regulatory concerns relating to this condition.

e. The criteria for allocation of OfS public grant funding. In accordance with any separate OfS policies on matters relating to public grant funding, the OfS may decide to take account of a provider's current and previous compliance with this condition in determining allocations of some types of OfS public grant funding.

Condition B3: Student outcomes

Scope and application

B3.1 This condition applies to the quality of higher education 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).

B3.2 This condition applies as an initial and general ongoing condition of registration for each **relevant provider** and as a general ongoing condition of registration for any provider that is not a **relevant provider**.

Requirement

B3.3 Without prejudice to the principles and requirements provided for by any other condition of registration and the scope of B3.1, the provider must deliver positive outcomes for students on its **higher education courses**.

B3.4 For the purposes of this condition, delivering positive outcomes means that either:

a. in the OfS's judgement, the **outcome data** for each of the **indicators** and **split indicators** are at or above the relevant **numerical thresholds**; or

b. to the extent that the provider does not have **outcome data** for each of the **indicators** and **split indicators** that are at or above the relevant **numerical thresholds**, the OfS otherwise judges that:

   i. the provider's **context** justifies the **outcome data**; and/or

   ii. this is because the OfS does not hold any data showing the provider's numerical performance against the **indicator** or **split indicator**; and/or

   iii. this is because the OfS does hold this data but the data refers to fewer than the **minimum number of students**.

Definitions

B3.5 For the purposes of this condition:

a. '**combination of mode and level of study**' means a specified mode of study combined with a specified level of study, as set out in the **technical documents**.

b. '**context**' includes, but is not limited to:

   i. factors that may explain the reasons for a provider's historical performance;

   ii. actions a provider has taken, or will take, to improve its performance, and the extent to which those actions are **credible**.

c. '**credible**' includes, but is not limited to, consideration of:

   i. a provider's track record of improving outcomes for its students;

   ii. the nature of a provider's plans, including whether they are likely to generate sufficient improvement in the provider's performance; and

   iii. whether a provider has demonstrated that it will invest sufficient resources to deliver a sufficient improvement.

d. ‘**designated data body**’ means:

   i. the body designated under Schedule 6 to the Higher Education and Research Act 2017 for the purposes of sections 64 and 65 of that Act; or

   ii. if there is no such body, the OfS.

e. ‘**higher education course**’ is to be interpreted:

   i. in accordance with the Higher Education and Research Act 2017; and

   ii. so as to include, for the avoidance of doubt:

      A. a course of study;

      B. a programme of research;

      C. any further education course that forms an integrated part of a higher education course; and

      D. any module that forms part of a higher education course, whether or not that module is delivered as an integrated part of the course.

f. ‘**indicators**’ means measures of the extent to which, for each c**ombination of mode and level of study**, students achieve positive outcomes in respect of:

   i. continuing in their studies;

   ii. completing their studies;

   iii. progressing into managerial or professional employment, or further study; and

   iv. any other areas as determined by the OfS,

   as defined in the **technical documents**.

g. ‘**minimum number of students**’ means the minimum number of students set by the OfS in the **technical documents**.

h. ‘**numerical thresholds**’ means the numerical thresholds set by the OfS in the **technical documents** in respect of the **indicators** and **split indicators**.

i. ‘**outcome data**’ means data that the OfS considers is appropriate for showing a provider’s numerical performance against an indicator or a split indicator, including but not limited to:

   v. Data sourced from the **designated data body**;

   vi. Data sourced from the Education and Skills Funding Agency; and

   vii. Data in respect of higher education provided in any manner or form by, or on behalf of that provider (including but not limited to, circumstances where a provider is responsible only for granting awards for students registered with another provider).

j. '**relevant provider**' means a provider for which, in the judgement of the OfS, **outcome data** exists in respect of the five year period preceding the date of the provider's application for registration.

k. '**split indicators**' means the **indicators** broken down into further indicators on the basis of the following:

viii. specified student characteristics, including disability, ethnicity and sex;

ix. students' year of entry or qualification;

x. subject type;

xi. course type;

xii. provider partnership and teaching arrangements; and

xiii. any other bases as determined by the OfS,

as defined in the **technical documents**.

l. '**technical documents**' means one or more document published by the OfS from time to time which contain detail about the definitions in this condition.

Summary

Applies to: All registered providers (subject to B3.2).

Initial or general ongoing condition: Initial and general ongoing condition.

Legal basis: Section 5 of HERA.

Guidance

Condition B3.1

333S. The reference to higher education 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, that postgraduate 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.

333T. This condition applies to any higher education provided 'by, or on behalf of, a provider'. This includes higher education provided to 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.

333U. 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.

333V. 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.

333W. In practice, these provisions may result in more than one registered provider being responsible for compliance with this condition in relation to the same course.

333X. While this condition, in principle, applies to any higher education within the scope of B3.1, the scope of a provider's obligations under the condition is set by B3.3 and B3.4. The effect of B3.3 and B3.4 is that a provider is required to deliver positive outcomes only in the areas covered by the 'indicators' and 'split indicators' (which are defined by the OfS in technical documents from time to time). By way of a hypothetical example, if the OfS defined the indicators and split indicators so as not to cover students on courses delivered through transnational education, a provider would not be required by the condition to deliver positive outcomes for those students. The OfS may decide to make changes to the definitions of the indicators and split indicators in the future, and this would have the effect of changing the scope of a provider's obligations under the condition.

Condition B3.2

333Y. A provider applying for registration with the OfS would only need to satisfy condition B3 as an initial condition if it is a 'relevant provider'.

333Z. A provider is a 'relevant provider' if, in the judgement of the OfS, data showing the provider's performance against the indicators or split indicators exists, and that data relates to any time during the five-year period preceding the date of the provider's application for registration. This data could relate to higher education provided in any manner or form by, or on behalf of, that provider. This would cover, for example, data about a provider teaching courses under a subcontractual arrangement with a lead provider, where that data was collected from the lead provider rather than the delivery provider. It could also cover data collected from an entity which no longer exists, for example where a provider has merged with, or divided from, another provider or where a provider has changed its legal name.

334A. Where a provider is not a ‘relevant provider’, the initial condition would not apply and the OfS would conduct its usual registration process without assessing the provider in relation to initial condition B3.

334B. All registered providers are subject to condition B3 as a general ongoing condition.

Condition B3.3

334C. This paragraph sets out the overall requirement of condition B3, which is that a provider must deliver positive outcomes for students on its higher education courses.

334D. The reference to ‘higher education courses’ in this condition is to be understood in accordance with the Higher Education and Research Act 2017.

Condition B3.4

334E. This paragraph explains the meaning of the overall requirement set out in B3.3, namely that a provider must ‘deliver positive outcomes’ for students on its higher education courses.

334F. The OfS will consider a provider to be ‘delivering positive outcomes’ if it is performing at or above each of the numerical thresholds that the OfS has set in relation to the ‘indicators’ and ‘split indicators’. The indicators and split indicators are measures of the extent to which a provider is achieving positive outcomes for its students in a range of areas. The OfS will assess a provider against the numerical thresholds using data it considers is appropriate, including but not limited to data sourced from the designated data body and/or the Education and Skills Funding Agency. In making this assessment, the OfS will consider whether there is sufficient statistical evidence to support a view that a provider’s performance is at or above a relevant numerical threshold.

334G. Where the OfS cannot be satisfied that a provider is performing at or above a relevant numerical threshold on the basis of the data, the OfS will consider whether the context in which the provider is operating nevertheless justifies the provider’s outcomes, in that they nevertheless represent positive outcomes for its students. Paragraphs x-x below contain an illustrative non-exhaustive list of examples to demonstrate how the OfS might reach a judgement about a provider’s context.

334H. Where the OfS does not hold any data on a provider’s performance against an indicator or split indicator, or where the OfS does hold data but it refers to fewer students than the minimum number set in technical documents published by the OfS, the OfS will not assess the provider’s performance against that indicator or split indicator and this will not prevent the provider from satisfying the condition. The minimum number set out in the technical documents is set by the OfS with the primary aim of preventing individual students from being identified from a provider’s data.

334I. The OfS will publish a document which contains detail about the definitions of the indicators and split indicators. Where the OfS decides that it is likely to be necessary to add, amend or remove one or more indicators or split indicators, it will consult on those changes.

334J. The OfS has determined and published an approach to setting numerical thresholds. The OfS will use that approach to determine and publish numerical thresholds that will apply in relation to each indicator and split indicator. Where the OfS proposes to change the numerical thresholds or it otherwise considers it appropriate to seek views, it will consult. For the avoidance of doubt, when the OfS reviews numerical thresholds, it expects to use the same approach to setting numerical thresholds that it has decided to adopt. The OfS does not intend to consult on that approach unless it proposes to change the approach itself or otherwise considers it appropriate to seek views on the approach.

334K. The OfS has published a document, Regulatory Advice 20[17], setting out the approach it will take to assessing a provider's compliance with this condition. Paragraphs 23 to 36 below provide a summary of the main features of that approach. Where the OfS decides that it is likely to be necessary to make material changes to that approach, it will consult on the revised content of that document.

334L. The following is an illustrative non-exhaustive list of examples to demonstrate the factors the OfS may consider, and the approach the OfS may take, in determining whether the context in which a provider is operating justifies the provider's outcomes. These factors fall into two broad groups:

a. Factors that may explain the reasons for a provider's historical performance.

b. Actions a provider has taken, or will take, to improve its performance, and the extent to which those actions are credible.

334M. The OfS may consider the following factors which relate to a provider's historical performance:

a. Evidence of a provider's performance in relation to benchmark values (where these are available). The OfS may test how an individual provider's outcome data compares to those of other providers for its specific student population using OfS individual provider benchmarks. The OfS will consider whether it has sufficient statistical evidence that a provider's performance is below a numerical threshold but above its individual benchmark. The OfS is likely to choose to place limited weight on evidence from benchmarking data where a provider makes a large contribution to its own benchmark. For the avoidance of doubt, the OfS will not treat a provider's performance against benchmark values as determinative of whether it satisfies condition B3.

b. Any external factors the OfS considers to be outside a provider's control that might reasonably be judged to have affected its past performance. When considering a provider's context, the OfS consider external factors where a provider can evidence the impact of those factors on its outcome data. For example, this might include:

[17] See www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/student-outcomes/.

i. The evidenced impact of the coronavirus pandemic on a provider's performance and whether such impact is broadly consistent with that for other providers.

ii. Regional or localised issues that provide evidence of performance different from established patterns. For example, an evidenced rapid change in employment trends in a local area may be relevant to a decision about whether to take regulatory action where a locally recruiting provider was not able to continue its previously positive progression rates.

c. Evidence of particular course or profession attributes that are unique to that provider, or a small group of similar providers, and result in performance consistently below a numerical threshold, but that may otherwise be considered positive. For example, a provider may have courses that are designed to provide access to a particular profession, but that profession is not classified as managerial or professional in the way the indicator has been constructed. The OfS may consider this positively where graduates report through the Graduate Outcomes survey that they are using the skills developed on their course or where graduates are demonstrating above average earnings in Longitudinal Education Outcomes data.

334N. The OfS may consider the following factors which relate to actions that a provider has taken, or is planning to take, to improve its performance:

a. Evidence that a provider no longer delivers, or no longer plans to deliver, courses that are included in the indicators, and the reasons for ceasing the delivery of such courses. For example, the OfS would consider whether a provider had identified poor performance on its courses and taken a strategic decision to cease delivery of those courses. In assessing compliance with the condition in these circumstances, the OfS would interrogate the timing and a provider's rationale for taking that action and would consider whether the provider had:

i. Taken action to improve its performance before the OfS's interest.

ii. Supported its students.

iii. Drawn lessons from its under-performance and applied, or had an intention to apply, those to its other courses.

iv. Not sought to evade regulatory action by closing courses with weak performance and launching new courses in their place.

b. Evidence of any actions a provider has already taken to improve its performance in relation to numerical thresholds, and the effectiveness and sustainability of those actions. This could include instances where a provider could demonstrate that its aggregate performance for a particular indicator for the past four years was below the relevant numerical threshold because of performance in an earlier year – and that performance showed significant and sustained improvement in the most recent years.

c. Evidence of a provider's plans to improve its performance in relation to numerical thresholds, and the credibility and sustainability of those plans. The OfS would expect

to see evidence of the actions a provider had already committed to taking to improve performance in the areas in which it had identified concerns. The OfS would consider whether a provider is able to demonstrate that it has credible and sustainable plans that are likely to sufficiently improve performance in an appropriate timescale. In determining credibility and sustainability, the OfS may consider the following factors:

i. A provider's track record of improving outcomes for its students.

ii. The nature of a provider's plans, including whether they are likely to generate improvement in the outcomes identified as of concern.

iii. Whether a provider has demonstrated that it will invest sufficient additional resources to deliver a sufficient improvement in outcomes and its ability to sustain that investment over a relevant period of time. In making this judgement, the OfS may seek additional information about the costs of proposals and consider the OfS's own assessments of a provider's financial viability and sustainability.

Assessing compliance for providers seeking registration

334O. The OfS will assess a provider's compliance with this initial condition itself and will not commission the designated quality body to undertake assessment activity. It will undertake this assessment through the following broad steps. Further details are set out in associated regulatory advice (Regulatory advice 20).[18]

334P. The OfS will review a provider's outcome data and consider whether it is satisfied that it has sufficient statistical evidence that the provider's performance against each of the indicators and split indicators is at or above the relevant numerical thresholds. The provider's outcome data will be assessed on the basis set out in a document published by the OfS which includes the OfS's approach to statistical confidence, including the principle that the closer the OfS is to having 100 per cent statistical confidence in the evidence, the stronger it will likely judge that evidence to be. In undertaking this review, the OfS may also consider, where appropriate, other matters relating to the interpretation of statistics.

334Q. Where the OfS is satisfied that a provider's performance against each of the indicators and split indicators is at or above the relevant numerical thresholds, it will determine that the provider has satisfied initial condition B3.

334R. Where the OfS cannot be satisfied from a provider's outcome data that its performance is at or above each relevant numerical threshold, the OfS will consider whether there is evidence available to the OfS that the provider's context means that any outcome data that is not at or above a relevant numerical threshold is justified, in that it nevertheless represents positive outcomes for students. The OfS will seek further information about contextual factors from a provider where the OfS considers it appropriate to do so.

[18] See www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/student-outcomes/.

334S. If, after following the step above, the OfS is not satisfied that there is context that means a provider's performance is justified, it will inform the provider that it has taken a provisional decision that the provider has not satisfied initial condition B3. The OfS will consider representations from the provider before reaching a final decision.

334T. Where the OfS does not hold any data on a provider's performance against an indicator or split indicator, the OfS will not assess the provider's performance against that indicator or split indicator and this will not prevent the provider from satisfying the initial condition.

334U. Where the OfS holds data on a provider's performance against an indicator or split indicator, but that data refers to fewer students than the minimum number set by the OfS in the technical documents, the OfS will not assess the provider's performance against that indicator or split indicator and this will not prevent the provider from satisfying the initial condition.

334V. Where a provider, or another legal entity that the OfS considers to be operating substantially the same higher education business, has previously been registered, a history of non-compliance with ongoing condition B3 is likely to result in a judgement that initial condition B3 is not satisfied.

334W. Where the OfS considers this initial condition to be satisfied, but that there is an increased risk of a future breach of the general ongoing condition, or a relevant wider regulatory concern, it may impose one or more specific ongoing conditions of registration and will also consider whether additional monitoring requirements are appropriate, for example, a requirement to report additional matters as reportable events.

Information gathering, assessment of evidence and enforcement

334X. The OfS will prioritise its assessment and enforcement activity for this ongoing condition. The OfS will publish the general approach that it will take to prioritisation in guidance. It may also choose to publish information about its specific approach in any given academic year.

334Y. In addition to this prioritisation process, the OfS will use its general risk-based approach to monitoring as set out in the regulatory framework to identify providers for which an assessment of compliance with this condition is considered to be appropriate , whether or not that provider is, or is likely to be, selected by the prioritisation process.

334Z. For a provider selected for assessment, the OfS will take the approach set out in Regulatory advice 20.[19] The OfS will assess a provider's compliance with this condition itself and will not commission the designated quality body to undertake assessment activity. Broadly, this approach consists of the following steps:

a. The OfS will review a provider's outcome data and consider whether it is satisfied that it has sufficient statistical evidence that the provider's performance against each of

[19] See www.officeforstudents.org.uk/publications/student-outcomes-and-teaching-excellence-consultations/student-outcomes/.

the indicators and split indicators is below the relevant numerical thresholds. The provider's outcome data will be assessed on the basis set out in a document published by the OfS which includes the OfS's approach to statistical confidence, including the principle that the closer the OfS is to having 100 per cent statistical confidence in the evidence, the stronger it will likely judge that evidence to be. In undertaking this review, the OfS may also consider, where appropriate, other matters relating to the interpretation of statistics.

b. Where performance below a relevant numerical threshold is identified, the OfS will then consider whether there is evidence available to the OfS that the provider's context means that any outcome data that is below a relevant numerical threshold is justified, in that it nevertheless represents positive outcomes for students. The OfS will seek further information about contextual factors from a provider where the OfS considers it appropriate to do so.

335A. Having completed its assessment, 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 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.

335B. 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 is likely to require improvement, to mitigate the impact of poor performance on students, or to incentivise future compliance by this and other providers. The OfS will follow any statutory consultation process as it takes enforcement action.

335C. Where the OfS considers there to be an increased risk of a future breach or a relevant wider regulatory concern, it may impose one or more specific ongoing conditions of registration and will also consider whether additional monitoring requirements are appropriate, for example, a requirement to report additional matters as reportable events.

335D. Where there is, or has been, a breach of this condition, or the OfS has imposed a specific condition of registration, the ways in which the OfS may take this into account include, but are not limited to, the following ways:

a. A provider's eligibility to participate in the TEF. The OfS will set out in its TEF guidance the way in which a provider's current and previous compliance with this condition may be taken into account in determining eligibility to participate in the TEF.

b. A provider's existing TEF rating. The OfS will set out in its TEF guidance the way in which a provider's current and previous compliance with this condition may affect any existing TEF rating.

c. Regulation of degree awarding powers. Where the OfS makes a final decision that there is, or has been, a breach of this condition, or where the OfS imposes a specific condition of registration due to regulatory concerns under this condition, it will take that into account in the following ways:

    i. Where there is a finding that a breach of this condition has taken place or is ongoing, the OfS will consider using its power under section 16 of HERA to suspend the aspects of the provider's registration that relate to the authorisation of DAPs and would be likely to suspend the provider's eligibility to be authorised for new or extended degree awarding powers..

    ii. Alternatively, without using the power under section 16 of HERA, in circumstances where a finding has been made that a breach of this condition has taken place or is ongoing, the OfS may decide that the provider is not suitable to be authorised for new or extended DAPs. In a similar way, the OfS may also decide that the provider is not suitable to be authorised for new or extended DAPs where the OfS has imposed a specific condition of registration due to regulatory concerns relating to this condition.

    The OfS would take this approach whether or not the authorisation sought is to gain new powers, or extend existing powers, for example by time, level or subject.

d. Regulation of university, and university college, title. Where the OfS makes a final decision that there is, or has been, a breach of this condition, or where the OfS imposes a specific condition of registration due to regulatory concerns under this condition, it will take that into account in the following ways:

    i. Where there is a finding that a breach of this condition has taken place or is ongoing, the OfS will consider using its power under section 16 of HERA to suspend the aspects of the provider's registration that relate to the authorisation of university or university college title and would be likely to suspend the provider's eligibility to be authorised for university or university college title.

    ii. Alternatively, without using the power under section 16 of HERA, in circumstances where a finding has been made that a breach of this condition has taken place or is ongoing, the OfS may decide that the provider is not suitable to be authorised for university or university college title. In a similar way, the OfS may also decide that the provider is not suitable to be authorised for university or university college title where the OfS has imposed a specific condition of registration due to regulatory concerns relating to this condition.

e. The criteria for allocation of OfS public grant funding. In accordance with any separate OfS policies on matters relating to public grant funding, the OfS may decide to take account of a provider's current and previous compliance with this condition in determining allocations of some types of OfS public grant funding.

Condition B4: Assessment and awards

Scope

B4.1 This condition applies to the quality of higher education 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).

Requirement

B4.2 Without prejudice to the principles and requirements provided for by any other condition of registration and the scope of B4.1, the provider must ensure that:

a. students are **assessed effectively**;

b. each **assessment** is **valid** and **reliable**;

c. **academic regulations** are designed to ensure that **relevant awards** are **credible**;

d. subject to paragraph B4.3, in respect of each **higher education course**, **academic regulations** are designed to ensure the effective assessment of technical proficiency in the English language in a manner which appropriately reflects the level and content of the applicable **higher education course**; and

e. **relevant awards** granted to students are **credible** at the point of being granted and when compared to those granted previously.

B4.3 The provider is not required to comply with B4.2d to the extent that:

a. a **higher education course** is assessing a language that is not English; or

b. the provider is able to demonstrate to the OfS, on the balance of probabilities, that its **academic regulations**, or failure to have any **academic regulations**, for assessing technical proficiency in the English language for one or more students are strictly necessary as a matter of law because compliance with B4.2d in respect of that student, or those students:

   i. would amount to a form of discrimination for the purposes of the Equality Act 2010; and

   ii. cannot be objectively justified for the purposes of relevant provisions of that Act; and

   iii. does not fall within an exception or exclusion provided for under or by virtue of that Act, including but not limited to provisions of the Act that relate to competence standards.

Definitions

B4.4 For the purposes of this condition B4:

a. "**academic misconduct**" means any action or attempted action that may result in a student obtaining an unfair academic advantage in relation to an **assessment**, including but not limited to plagiarism, unauthorised collaboration and the possession of unauthorised materials during an **assessment**.

b. "**academic regulations**" means regulations adopted by the provider, which govern its **higher education courses**, including but not limited to:

   i. the assessment of students' work;

   ii. student discipline relating to academic matters;

   iii. the requirements for **relevant awards**; and

   iv. the method used to determine classifications, including but not limited to:

      A. the requirements for an award; and

      B. the algorithms used to calculate the classification of awards.

c. "**assessed effectively**" means assessed in a challenging and appropriately comprehensive way, by reference to the subject matter of the **higher education course**, and includes but is not limited to:

   i. providing stretch and rigour consistent with the level of the course;

   ii. testing **relevant skills**; and

   iii. **assessments** being designed in a way that minimises the opportunities for **academic misconduct** and facilitates the detection of such misconduct where it does occur.

d. "**assessment**" means any component of a course used to assess student achievement towards a **relevant award**, including an examination and a test.

e. **"credible"** means that, in the reasonable opinion of the OfS, **relevant awards** reflect students' knowledge and skills, and for this purpose the OfS may take into account factors which include, but are not limited to:

   i. the number of **relevant awards** granted, and the classifications attached to them, and the way in which this number and/or the classifications change over time and compare with other providers;

   ii. whether students are **assessed effectively** and whether **assessments** are **valid** and **reliable**;

   iii. any actions the provider has taken that would result in an increased number of **relevant awards**, and/or changes in the classifications attached to them, whether or

not the achievement of students has increased, for example, changes to assessment practices or **academic regulations**; and

iv. the provider's explanation and evidence in support of the reasons for any changes in the classifications over time or differences with other providers.

f. **"higher education course"** is to be interpreted:

i. in accordance with the Higher Education and Research Act 2017; and

ii. so as to include, for the avoidance of doubt:

A. a course of study;

B. a programme of research;

C. any further education course that forms an integrated part of a higher education course; and

D. any module that forms part of a higher education course, whether or not that module is delivered as an integrated part of the course.

g. **"relevant award"** means:

i. a **research award**;

ii. a **taught award**; and/or

iii. any other type of award or qualification in respect of a **higher education course**, including an award of credit granted in respect of a module that may form part of a larger **higher education course**,

whether or not granted pursuant to an authorisation given by or under the Higher Education and Research Act 2017, another Act of Parliament or Royal Charter.

h. **"relevant skills"** means:

i. knowledge and understanding relevant to the subject matter and level of the **higher education course**; and

ii. other skills relevant to the subject matter and level of the **higher education course** including, but not limited to, cognitive skills, practical skills, transferable skills and professional competences.

i. **"reliable"** means that an **assessment**, in practice, requires students to demonstrate knowledge and skills in a manner which is consistent as between the students registered on a **higher education course** and over time, as appropriate in the context of developments in the content and delivery of the **higher education course**.

j. **“research award”** and **“taught award”** have the meanings given in section 42(3) of the Higher Education and Research Act 2017.

k. **“valid”** means that an **assessment** in fact takes place in a way that results in students demonstrating knowledge and skills in the way intended by design of the assessment.

Summary

Applies to: all registered providers

Initial or general ongoing condition: general ongoing condition

Legal basis: section 5 of HERA

Guidance

Condition B4.1

335E. The reference to higher education 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, that postgraduate 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.

335F. This condition applies to any higher education 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.

335G. 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.

335H. 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.

335I. In practice, these provisions may result in more than one registered provider being responsible for compliance with this condition in relation to the same course.

Condition B4.2

335J. The requirement of condition B4 is expressed as a principle that can be satisfied in different ways. To assist providers in understanding how the OfS may interpret this principles-based requirement in practice, the following paragraphs provide a small number of illustrative examples. These examples are not exhaustive; nor are they provided as rules that, if followed, would constitute compliance with the condition.

335K. “Academic misconduct” includes presenting work for assessment that is not the work of the student being assessed and includes but is not limited to the use of services offered by an essay mill.

335L. In relation to “assessed effectively”, the following is an illustrative non-exhaustive list of examples to demonstrate the approach the OfS may take to the interpretation of this condition:

a. An undergraduate degree course in which students at different stages of the course are taught together on a module and assessed in the same way, but without differentiation in the marking criteria, would likely be of concern.

b. A course that assesses a limited range of subject matter, or knowledge and skills would likely be of concern.

c. An integrated higher or degree apprenticeship end-point assessment that does not meet the requirements of external quality assurance monitoring, for example because it is not delivered in line with the published EPA plan, would likely be of concern.

d. A course that is accredited by a PSRB and does not meet the requirements for assessment set by that body would likely be of concern.

e. An absence of feedback on students’ performance before a final essay or exam, or feedback not returned in time for students to learn from it before the next assessment, would likely be of concern.

f. Assessments designed in a way that allows students to gain marks for work that is not their own would likely be of concern.

g. A provider not taking reasonable steps to detect and prevent plagiarism, students’ use of essay mills, or other forms of academic misconduct by students, would likely be of concern.

h. Selection of examiners for research students in a way that does not preserve academic rigour would likely be of concern.

335M. In relation to “valid” and “reliable”, the following is an illustrative non-exhaustive list of examples to demonstrate the approach the OfS may take to the interpretation of this condition:

a. An assessment that tests in practice the things it was designed to assess. For example, an assessment that focuses only the material taught at the end of a long course is, on its own, is unlikely to provide a valid assessment of that course.

b. An assessment that results in differences in the marks awarded to students demonstrating the same achievement. For example, different marks awarded to projects or dissertations where students have worked on different topics but have demonstrated the same level of achievement suggest that the assessment design may not be reliable.

335N. In relation to “credible”, the following is an illustrative non-exhaustive list of examples to demonstrate the approach the OfS may take to the interpretation of this condition, and to identifying circumstances in which it is likely to be concerned about the credibility of a provider’s qualifications:

a. An increase in the number or proportion of first class or 2i degrees awarded over time. For example, where a provider is unable to provide evidence to account for an increase in the proportion of first or 2i classifications it has awarded.

b. Changes to academic regulations. For example, where a provider has changed its degree classification algorithm, or other aspects of its academic regulations, such that students are likely to receive a higher classification than previous students without an increase in their level of achievement.

c. Research degrees awarded to recognise a student’s contribution to the output of their research group rather than their individual contribution to knowledge.

335O. Where a provider has an evidenced explanation of the reasons for an increase in awards or the classifications of awards, the OfS is more likely to place weight on this evidence if it pre-dates the OfS’s interest and demonstrates that the provider has routinely satisfied itself that its approach has not resulted in increased awards or classifications, regardless of whether or not the achievement of students has increased. An absence of rigorous evidence and evaluation in advance of changes a provider makes, or has made, to it academic regulations or assessment practices, is likely to cause concern.

Condition B4.3

335P. In order to successfully rely on the exception in B4.3(b), the nature of the evidence a provider would need to put forward would go beyond articulating potential legal concerns or matters to which it has had regard in its decision-making and would require compelling evidence and reasoning on matters of law. As the exception in B4.3(b) only applies ‘to the extent’ that a provider can demonstrate a conflict with the Equality Act 2010, it would not be sufficient for a provider to put forward evidence and reasoning about its academic regulations in general terms; rather, a provider would need to address the particular aspects of its academic regulations which it is seeking to justify

under the exception, and the particular courses and assessments to which these aspects relate.

335Q. To give an example, citing this exception, a provider could seek to demonstrate that it is obliged, in order to avoid discrimination under the Equality Act 2010, to design its academic regulations in a manner which makes certain allowances for students with dyslexia or other learning disabilities on some courses. If this was the case, the OfS would expect the provider to demonstrate, in the context of the particular courses and assessments at issue, that any allowances made were strictly necessary to avoid discrimination under the Equality Act 2010, with reference to compelling evidence and reasoning which supports this. The OfS expects that potential conflicts between requirements relating to English language proficiency and the Equality Act 2010 will only arise in rare cases, and therefore that this exception is likely to be invoked only in limited circumstances, for example in relation to students with particular learning disabilities.

Information gathering, assessment of evidence and enforcement

335R. The OfS will use its general risk-based approach to monitoring as set out in the regulatory framework.

335S. 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.

335T. Where the OfS considers it appropriate to use its investigatory powers it may conduct an investigation itself, or may ask the designated quality body, or another appropriate body or individual, to gather further information it considers relevant. An investigation will normally involve a visit to the provider and interviews with relevant staff and students.

335U. As part of its approach to assessing compliance with this condition, the OfS is likely to need access to students' assessed work, including for students who are no longer registered on a course. A provider is therefore expected to retain appropriate records of students' assessed work for such regulatory purposes for a period of five years after the end date of a course. Where possible, a provider is expected to retain records of student assessments in an anonymised form by removing students' personal data from the records. However, in doing so, it should ensure that removal of students' personal data would not limit the OfS's ability to assess the provider's compliance with condition B4, including by ensuring that all of the work of an individual student can be identified from the records.

335V. Where students' personal data cannot be anonymised as described in paragraph 61, the OfS would still expect a provider to retain this data for five years after the end date of a course.

335W. The absence of records of students' assessed work may lead the OfS to make negative inferences about a provider's compliance and/or may result in the OfS taking targeted regulatory action to address the risk that it is unable to monitor compliance and regulate effectively.

335X. 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.

335Y. 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 is likely to require improvement, to mitigate the impact of poor performance on students, or to incentivise future compliance by this and other providers. The OfS will follow any statutory consultation process as it takes enforcement action.

335Z. Where the OfS considers there to be an increased risk of a breach or a wider regulatory concern, it may impose one or more specific ongoing conditions of registration and will also consider whether additional monitoring requirements are appropriate, for example, a requirement to report additional matters as reportable events.

336A. Where there is, or has been, a breach of this condition, or the OfS has imposed a specific condition of registration, the ways in which the OfS may take this into account include, but are not limited to, the following:

a. A provider's eligibility to participate in the TEF. The OfS will set out in its TEF guidance the way in which a provider's current and previous compliance with this condition may be taken into account in determining its eligibility to participate in the TEF.

b. A provider's existing TEF rating. The OfS will set out in its TEF guidance the way in which a provider's current and previous compliance with this condition may affect any existing TEF rating.

c. Regulation of degree awarding powers. Where the OfS makes a final decision that there is, or has been, a breach of this condition, or where the OfS imposes a specific condition of registration due to regulatory concerns under this condition, it will take that into account in the following ways:

i. Where there is a finding that a breach of this condition has taken place or is ongoing, the OfS will consider using its power under section 16 of HERA to suspend the aspects of the provider's registration that relate to the authorisation of DAPs and would be likely to suspend the provider's eligibility to be authorised for new or extended degree awarding powers.

ii. Alternatively, without using the power under section 16 of HERA, in circumstances where a finding has been made that a breach of this condition has taken place or is ongoing, the OfS may decide that the provider is not suitable to be authorised for new or extended DAPs. In a similar way, the OfS may also decide that the provider is not suitable to be authorised for new or extended DAPs where the OfS has imposed a specific condition of registration due to regulatory concerns relating to this condition.

The OfS would take this approach whether or not the authorisation sought is to gain new powers, or extend existing powers, for example by time, level or subject.

d. Regulation of university, and university college, title. Where the OfS makes a final decision that there is, or has been, a breach of this condition, or where the OfS imposes a specific condition of registration due to regulatory concerns under this condition, it will take that into account in the following ways:

i. Where there is a finding that a breach of this condition has taken place or is ongoing, the OfS will consider using its power under section 16 of HERA to suspend the aspects of the provider's registration that relate to the authorisation of university or university college title and would be likely to suspend the provider's eligibility to be authorised for university or university college title.

ii. Alternatively, without using the power under section 16 of HERA, in circumstances where a finding has been made that a breach of this condition has taken place or is ongoing, the OfS may decide that the provider is not suitable to be authorised for university or university college title. In a similar way, the OfS may also decide that the provider is not suitable to be authorised for university or university college title where the OfS has imposed a specific condition of registration due to regulatory concerns relating to this condition.

336B. The criteria for allocation of OfS public grant funding. In accordance with any separate OfS policies on matters relating to public grant funding, the OfS may decide to take account of a provider's current and previous compliance with this condition in determining allocations of some types of OfS public grant funding.

Condition B5: Sector-recognised standards

Scope

B5.1 This condition relates to the standards applied to higher education 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).

Requirement

B5.2 Without prejudice to the principles and requirements provided for by any other condition of registration and the scope of B5.1, the provider must ensure that, in respect of any **relevant awards** granted to students who complete a **higher education course** provided by, or on behalf of, the provider (whether or not the provider is the awarding body):

a. any standards set appropriately reflect any applicable **sector-recognised standards**; and

b. awards are only granted to students whose knowledge and skills appropriately reflect any applicable **sector-recognised standards**.

Definitions

B5.3 For the purposes of this condition B5:

a. "**higher education course**" is to be interpreted:

i. in accordance with the Higher Education and Research Act 2017; and

ii. so as to include, for the avoidance of doubt:

A. a course of study;

B. a programme of research;

C. any further education course that forms an integrated part of a higher education course; and

D. any module that forms part of a higher education course, whether or not that module is delivered as an integrated part of the course.

b. "**relevant award**" means:

i. a **research award**;

ii. a **taught award**; and/or

iii. any other type of award or qualification in respect of a **higher education course**, including an award of credit granted in respect of a module that may form part of a larger **higher education course**,

whether or not granted pursuant to an authorisation given by or under the Higher Education and Research Act 2017, another Act of Parliament or Royal Charter.

c. "**research award**" and "**taught award**" have the meanings given in section 42(3) of the Higher Education and Research Act 2017.

d. "**sector-recognised standards**" means the standards contained in the document of that title published by the OfS from time to time.

Summary

Applies to: all registered providers

Initial or general ongoing condition: general ongoing condition

Legal basis: section 5 of HERA

Guidance

Condition B5.1

336C. The reference to higher education 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, that postgraduate 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.

336D. This condition applies to any higher education 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.

336E. 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.

336F. 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.

336G. In practice, these provisions may result in more than one registered provider being responsible for compliance with this condition in relation to the same course.

Condition B5.2

336H. “Relevant award” includes, but is not limited to, the awards made by a provider in relation to an apprenticeship.

Information gathering, assessment of evidence and enforcement

336I. The OfS will use its general risk-based approach to monitoring as set out in the regulatory framework.

336J. 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.

336K. Where the OfS considers it appropriate to use its investigatory powers it will ask the designated quality body to gather further information it considers relevant. An investigation will normally involve a visit to the provider and interviews with relevant staff and students.

336L. As part of its approach to assessing compliance with this condition, the OfS and the designated quality body are likely to need access to students’ assessed work, including for students who are no longer registered on a course. A provider is therefore expected to retain appropriate records of students’ assessed work for such regulatory purposes for a period of five years after the end date of a course. Where possible, a provider is expected to retain records of student assessments in an anonymised form by removing students’ personal data from the records. However, in doing so, it should ensure that removal of students’ personal data would not limit the OfS’s ability to assess the provider’s compliance with condition B5, including by ensuring that all of the work of an individual student can be identified from the records.

336M. Where students' personal data cannot be anonymised as described in paragraph 77, the OfS would still expect a provider to retain this data for five years after the end date of a course.

336N. The absence of records of students' assessed work may lead the OfS to make negative inferences about a provider's compliance and/or may result in the OfS taking targeted regulatory action to address the risk that it is unable to monitor compliance and regulate effectively.

336O. Having received relevant information from the designated quality body, 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.

336P. 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 is likely to require improvement, to mitigate the impact of poor performance on students, or to incentivise future compliance by this and other providers. The OfS will follow any statutory consultation process as it takes enforcement action.

336Q. 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 and will also consider whether additional monitoring requirements are appropriate, for example, a requirement to report additional matters as reportable events.

336R. Where there is, or has been, a breach of this condition, or the OfS has imposed a specific condition of registration, the ways in which the OfS may take this into account include, but are not limited to, the following:

a. A provider's eligibility to participate in the TEF. The OfS will set out in its TEF guidance the way in which a provider's current and previous compliance with this condition may be taken into account in determining its eligibility to participate in the TEF.

b. A provider's existing TEF rating. The OfS will set out in its TEF guidance the way in which a provider's current and previous compliance with this condition may affect any existing TEF rating.

c. Regulation of degree awarding powers. Where the OfS makes a final decision that there is, or has been, a breach of this condition, or where the OfS imposes a specific condition of registration due to regulatory concerns under this condition, it will take that into account in the following ways:

i. Where there is a finding that a breach of this condition has taken place or is ongoing, the OfS will consider using its power under section 16 of HERA to suspend the aspects of the provider's registration that relate to the authorisation of DAPs and would be likely to suspend the provider's eligibility to be authorised for new or extended degree awarding powers.

ii. Alternatively, without using the power under section 16 of HERA, in circumstances where a finding has been made that a breach of this condition has taken place or is ongoing, the OfS may decide that the provider is not suitable to be authorised for new or extended DAPs. In a similar way, the OfS may also decide that the provider is not suitable to be authorised for new or extended DAPs where the OfS has imposed a specific condition of registration due to regulatory concerns relating to this condition.

The OfS would take this approach whether or not the authorisation sought is to gain new powers, or extend existing powers, for example by time, level or subject.

d. Regulation of university, and university college, title. Where the OfS makes a final decision that there is, or has been, a breach of this condition, or where the OfS imposes a specific condition of registration due to regulatory concerns under this condition, it will take that into account in the following ways:

   i. Where there is a finding that a breach of this condition has taken place or is ongoing, the OfS will consider using its power under section 16 of HERA to suspend the aspects of the provider's registration that relate to the authorisation of university or university college title and would be likely to suspend the provider's eligibility to be authorised for university or university college title.

   ii. Alternatively, without using the power under section 16 of HERA, in circumstances where a finding has been made that a breach of this condition has taken place or is ongoing, the OfS may decide that the provider is not suitable to be authorised for university or university college title. In a similar way, the OfS may also decide that the provider is not suitable to be authorised for university or university college title where the OfS has imposed a specific condition of registration due to regulatory concerns relating to this condition.

e. The criteria for allocation of OfS public grant funding. In accordance with any separate policies on matters relating to public grant funding, the OfS may decide to take account of a provider's current and previous compliance with this condition in determining allocations of some types of OfS public grant funding.

[Paragraphs 337-355 are not used.]

Condition B6: Teaching Excellence Framework participation

Condition B6: The provider must participate in the Teaching Excellence Framework (TEF)

Summary

Applies to: all registered providers with at least 500 undergraduate students on higher education courses and at least two TEF indicators based on a denominator of at least 500 students.

Initial or general ongoing condition: ongoing condition.

Legal basis: Section 5 of HERA.

Guidance

355A. The 'Teaching Excellence Framework (TEF)' means the scheme that the OfS has adopted under section 25 of HERA to give ratings to the quality of, and the standards applied to, higher education.

356. 'Participate' means that a provider must make a submission in the next TEF exercise by the submission deadline published by the OfS.

357. Participation in the TEF is mandatory for all registered providers that fulfil the 'eligibility requirements' set out at paragraph 6 below and have:

   a. At least 500 undergraduate students on higher education courses (the 'headcount threshold'); and

   b. At least two TEF indicators based on a denominator of at least 500 students (the 'indicator threshold').

358. A provider meets the headcount threshold if it has 500 undergraduate students or more on higher education courses. Student numbers for this headcount threshold will be calculated using data collected by the DDB or in the Individualised Learner Record. The calculation will be based on intensity of study where a full-time student will typically count as one, and a part-time student will be treated as a proportion of a full-time student. The calculation will only take into account students who are registered with the provider, rather than students registered with another provider but taught by the provider under a subcontractual arrangement. The OfS has published a technical specification of the way it will perform this calculation.[20]

359. A provider meets the indicator threshold if it has at least two TEF indicators based on a denominator of at least 500 students. For the purposes of this calculation, the OfS will

[20] The technical specification is set out in the student numbers technical document which can be found on the web page www.officeforstudents.org.uk/data-and-analysis/student-number-data. The first specification to include this calculation relates to 2020-21 student data collections.

refer to the denominators of TEF indicators which combine the four most recent years of study, rather than those which report on individual years. Both indicators must be in the same mode of study, and either in full time or part time modes. Indicators in the apprenticeships mode of study will not be considered for this purpose.

360. The eligibility requirements are that (i) a provider must meet the quality and standards requirements of its own nation and; (ii) must deliver courses that are within the scope of assessment. These requirements will be set out in full in the published TEF guidance. To retain a TEF rating once it is awarded, a provider must continue to meet the eligibility requirements.

361. If a provider is not eligible to take part in the TEF, or is not eligible to retain a TEF rating once awarded, it is not in breach of this condition of registration. Where the OfS has made a decision that a provider is ineligible to participate in the TEF or retain a TEF rating, this period of ineligibility will, as a minimum, normally last until the next TEF submission window opens. At that point, the OfS would normally expect to consider whether there has been a material change in circumstances which means that a provider should now be required to participate in the TEF.

362. A registered provider for which participation in the TEF is not mandatory (because it does not meet the student headcount threshold or the indicator threshold) but otherwise meets the eligibility requirements may participate in the TEF if it chooses to do so.

363. A provider from the devolved administrations that meets the eligibility requirements may choose to participate in the TEF if its government has given the appropriate consent for it to do so. Such a provider is not able to register with the OfS and is therefore not subject to this condition of registration.

Initial conditions of registration

Condition B7: Quality

Scope

B7.1 This condition applies to the quality of higher education to be provided in any manner or form by, or on behalf of, a provider (including, but not limited to, circumstances where a provider would be responsible only for granting awards for students registered with another provider).

Requirement

B7.2 Without prejudice to the principles and requirements provided for by any other condition of registration and the scope of B7.1, the provider must:

a. have **credible** plans that would enable the provider, if registered, to comply with conditions B1, B2 and B4 from the date of registration; and

b. have the **capacity and resources** necessary to deliver, in practice, those plans.

Definitions

B7.3 For the purposes of this condition B7:

a. "**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, and to be employed, by the provider;

   iii. the physical and digital learning resources deployed, and to be deployed, by the provider and

   iv. the provider's management and governance arrangements.

b. "**credible**" includes, but is not limited to, evidence of the provider's past performance delivering higher education.

Summary

Applies to: all providers seeking registration

Initial or general ongoing condition: initial condition

Legal basis: section 5 of HERA

Guidance

Condition B7.1

363A. This condition applies to the courses that the provider plans to provide when it is registered.

363B. The reference to higher education 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, that postgraduate 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.

363C. This condition applies to any higher education 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.

363D. The reference to "including, but not limited to, circumstances where a provider would be 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 would be the awarding body for a course, whether or not that provider would have any other role in the design or delivery of that course.

363E. Where a provider would not be the awarding body for a course, this condition applies to a course the provider itself would deliver, or which would be 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 that would deliver, or allow 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 that would deliver, or allow 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.

363F. In practice, these provisions may result in more than one registered provider being responsible for compliance with this condition in relation to the same course.

Condition B7.2

363G. The OfS is likely to draw on evidence submitted by a provider as part of its application for registration to make a judgement about whether the provider has "credible" plans in accordance with this requirement. For example, evidence submitted about the policies and processes a provider proposes to have in place to ensure compliance with ongoing conditions B1, B2 and B4, and evidence of how the provider intends to assess its own compliance with those conditions, is likely to be relevant.

363H. Where a provider seeking registration has previously delivered, or is currently delivering, higher education courses, the “plans” required under this condition may include evidence relating to the provider’s experience of delivery of those courses. The OfS will have regard to that evidence in determining whether the condition is satisfied.

363I. Where a registered provider is seeking registration in a different category of registration, this requires the OfS to deregister the provider and make a new registration decision by deciding whether each of the initial conditions is satisfied. In these circumstances “date of registration” means the date of the new registration.

Condition B7.3

363J. The OfS is likely to draw on evidence submitted by a provider as part of its application for registration to make a judgement about whether the provider has the “capacity and resources” necessary to deliver, in practice, its plans. For example, evidence submitted in relation to a provider’s financial viability and sustainability, or its management and governance arrangements are likely to be relevant.

Assessing compliance

363K. The OfS will assess compliance with this initial condition for all providers seeking registration. It may commission the designated quality body to conduct an assessment of quality to provide information to the OfS to inform the OfS’s decision about whether the condition is satisfied. An assessment by the designated quality body will involve the submission of specified information to the designated quality body and will normally involve a visit to the provider and interviews with relevant staff and students.

363L. The OfS reserves the right where it judges it appropriate to conduct an assessment of quality itself or to ask another appropriate body or individual to gather relevant information and, in these circumstances, would not commission the designated quality body to undertake assessment activity.

363M. Where a provider, or another legal entity that the OfS considers to be operating substantially the same higher education business, has previously been registered, a history of non-compliance with ongoing conditions B1, B2 or B4 is likely to result in a judgement that initial condition B7 is not satisfied.

363N. Where the OfS considers this initial condition to be satisfied, but that there is an increased risk of a breach of one or more of the general ongoing conditions for quality (conditions B1, B2 and B4), or a wider regulatory concern, it may impose one or more specific ongoing conditions of registration and will also consider whether additional monitoring requirements are appropriate, for example, a requirement to report additional matters as reportable events, or to have an additional assessment by the OfS, the designated quality body, or other appropriate body.

Condition B8: Standards

Scope

B8.1 This condition relates to the standards to be applied to higher education to be provided in any manner or form by, or on behalf of, a provider (including, but not limited to, circumstances where a provider would be responsible only for granting awards for students registered with another provider).

Requirement

B8.2 Without prejudice to the principles and requirements provided for by any other condition of registration and the scope of B8.1, the provider must demonstrate, in a **credible** manner, that any standards to be set and/or applied in respect of any **relevant awards** granted to students who complete a **higher education course** provided by, or on behalf of, the provider (if registered), whether or not the provider is the awarding body, appropriately reflect any applicable **sector-recognised standards**.

Definitions

B8.3 For the purposes of this condition B8:

a. "**credible**" includes, but is not limited to, evidence of the provider's past performance delivering higher education.

b. "**higher education course**" is to be interpreted:

i. in accordance with the Higher Education and Research Act 2017; and

ii. so as to include, for the avoidance of doubt:

A. a course of study;

B. a programme of research;

C. any further education course that forms an integrated part of a higher education course; and

D. any module that forms part of a higher education course, whether or not that module is delivered as an integrated part of the course.

c. "**relevant award**" means:

i. a **research award**;

ii. a **taught award**; and/or

iii. any other type of award or qualification in respect of a **higher education course**, including an award of credit granted in respect of a module that may form part of a larger **higher education course**,

whether or not granted pursuant to an authorisation given by or under the Higher Education and Research Act 2017, another Act of Parliament or Royal Charter.

d. "**research award**" and "**taught award**" have the meanings given in section 42(3) of the Higher Education and Research Act 2017.

e. "**sector-recognised standards**" means the standards contained in the document of that title published by the OfS from time to time, and which apply as at the date of the provider's application for registration.

Summary

Applies to: all providers seeking registration

Initial or general ongoing condition: initial condition

Legal basis: section 5 of HERA

Guidance

Condition B8.1

363O. This condition applies to the courses that the provider plans to provide when it is registered.

363P. The reference to higher education 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, that postgraduate 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.

363Q. This condition applies to any higher education 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.

363R. The reference to "including, but not limited to, circumstances where a provider would be 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 would be the awarding body for a course, whether or not that provider would have any other role in the design or delivery of that course.

363S. Where a provider would not be the awarding body for a course, this condition applies to a course the provider itself would deliver, or which would be 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 that would deliver, or allow 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 that would deliver, or allow 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.

363T. In practice, these provisions may result in more than one registered provider being responsible for compliance with this condition in relation to the same course.

Condition B8.2

363U. This requirement is designed to assess a provider's ability to comply with ongoing condition B5, if it is registered. In assessing the "standards to be set and/or applied" under this requirement, the OfS will consider whether it is satisfied that: (a) the standards to be set for a provider's courses appropriately reflect sector-recognised standards; and (b) the awards to be granted for those courses will only be granted to students with knowledge and skills which also appropriately reflect sector-recognised standards. This is the case whether or not a provider is the awarding body for a course.

363V. Where a provider seeking registration has previously delivered, or is currently delivering, higher education courses, the OfS may have regard to evidence relating to the standards set for those courses, and achieved by students receiving those awards in practice, in determining whether initial condition B8 is satisfied.

363W. Where a registered provider is seeking registration in a different category of registration, this requires the OfS to deregister the provider and make a new registration decision by deciding whether each of the initial conditions is satisfied. In these circumstances, the OfS's assessment of this condition will relate to the courses the provider plans to provide from the date of the new registration.

Assessing compliance

363X. The OfS will assess compliance with this initial condition for all providers seeking registration. It will commission the designated quality body to conduct an assessment of standards to provide information to the OfS to inform the OfS's decision about whether the condition is satisfied. An assessment by the designated quality body will involve the submission of specified information to the designated quality body and may involve a visit to the provider and interviews with relevant staff and students.

363Y. The purpose of a standards assessment is for the designated quality body to scrutinise the courses that the provider will deliver when it is registered, whether or not they are currently delivered, and reach a judgement about whether the standards set in those courses appropriately reflect sector-recognised standards.

363Z. Where a provider has applied to be authorised for New DAPs at the same time as its application for registration, the OfS will commission a New DAPs test from the designated quality body and may ask the designated quality body to include in its advice separate information that would allow the OfS to determine whether initial condition B8 is satisfied.

363AA. Having received relevant information from the designated quality body, the OfS will reach a view about whether the initial condition is satisfied. Where a provider, or another legal entity operating substantially the same higher education business, has previously been registered, a history of non-compliance with ongoing condition B5 is likely to result in a judgement that initial condition B8 is not satisfied.

363BB. Where the OfS considers this initial condition to be satisfied, but that there is an increased risk of a breach of the general ongoing condition for standards (condition B5), or a wider regulatory concern, it may impose one or more specific ongoing conditions of registration and will also consider whether additional monitoring requirements are appropriate, for example, a requirement to report additional matters as reportable events, or to have an additional assessment by the designated quality body.

Condition C1: Guidance on consumer protection law

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

Summary

Applies to: all registered providers.

Initial or general ongoing condition: initial and ongoing condition.

Legal basis: section 5 of HERA.

Notes

364. Any assessment that the OfS makes about whether a provider has satisfied this condition is not a judgment about whether the provider is complying with consumer protection law and should not be seen as such. Providers will need to continue to seek their own legal advice to ensure compliance with the law.

Guidance

365. 'Policies, procedures and terms and conditions' means the arrangements that a provider has put in place to:

    a. Ensure that applicants and students are provided with accurate information about their course and the provider and that such information is quantifiable, timely, accessible and enforceable.

    b. Enter into student contracts that have transparent and fair terms and conditions.

    c. Ensure that complaint handling practices are clear, accessible and fair.

366. 'Student contracts' include the contract for academic services and other contracts into which a student may enter as part of the higher education experience, including but not limited to contracts governing the provision of accommodation, disability support packages, scholarships, sports facilities and additional course costs.

367. 'Relevant guidance' means the CMA's publication 'UK higher education providers: advice on consumer protection law',[21] or other guidance that the provider can demonstrate to the satisfaction of the OfS is similarly authoritative.

368. In judging whether a provider has had due regard to relevant guidance about how to comply with consumer protection law, material that the OfS may consider includes:

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21 See www.gov.uk/government/publications/higher-education-consumer-law-advice-for-providers.

Compliance checklists are at Annex A of this guidance.

a. Information provided or published by the provider about the approach it takes to ensuring compliance with consumer protection law.

b. The information a provider publishes, or provides directly to applicants and students, about the provider and its courses.

c. The contracts a provider uses to govern its relationship with students and the terms and conditions for these.

d. Student complaints, whether to the OIA or elsewhere, that the provider is not operating in compliance with consumer protection law.

e. Information from the CMA or from others, that the provider is not operating in compliance with consumer protection law.

Assessment

369. A provider seeking registration is required to submit a short self-assessment, describing how, in developing its policies, procedures and terms and conditions, it has given due regard to relevant guidance. Where the provider has used guidance other than that published by the CMA, it must demonstrate the appropriateness of this guidance.

370. The self-assessment must be evidenced by reference to supporting evidence, that might include, but not be limited to:

- information on organisational and staffing arrangements, for example, whether there is a department and/or designated staff member responsible for consumer law issues
- information about staff training on the provider's consumer law obligations
- minutes of relevant meetings and other relevant documentation
- information on working groups or committees established to ensure compliance with consumer law
- details of reviews (planned or actual) into information management and provision, complaint handling and the setting terms and conditions and/or contracts
- evidence that professional legal advice has been sought
- policies relating to sources of information for staff and students, with examples of how this is provided e.g. hyperlinks in the provider's submission
- policies and procedures intended to ensure that student contracts are fair and transparent
- policies and procedures relating to consumer law obligations, such as information management and provision, complaints handling and setting terms and conditions and/or contracts

- complaints process
- refund and compensation policy
- samples of web-site course descriptions, letters supporting offers to applicants, terms and conditions, model contracts
- information showing awareness of the OIA's Good Practice Framework.

371. In order to determine whether a provider continues to comply with this condition, the OfS's assessment will be informed by the provider's behaviour, information submitted by the provider, and any other information available to the OfS, such as whistleblowing / public interest disclosure reports submitted to OfS, or information from other relevant bodies, such as OIA, CMA or Trading Standards. The OfS may seek further information and evidence from a provider if it deems this to be necessary.

Behaviours

372. In order to determine whether or not a provider is complying with this condition on an ongoing basis, the OfS's judgement will be informed by the provider's behaviour, as well as information submitted by the provider or available to the OfS.

373. The following are non-exhaustive examples of behaviours that may indicate compliance with this general ongoing condition. A provider:

- responds to the OfS's queries in relation to the condition quickly, openly and transparently
- regularly reviews the adequacy and effectiveness of its policies and procedures relating to the provision of information; terms and conditions; and complaints handling.

374. The following are non-exhaustive examples of behaviours that may indicate non-compliance with these general ongoing conditions. A provider:

- does not follow the procedures set out in its original submission and this is evidenced to OfS through third party feedback from students, their representative organisations, CMA, OIA or Trading Standards
- does not engage with the OfS, and does not notify the OfS of any reportable events and/or does not retain and submit the required information in relation to any condition
- fails to comply with relevant statutory obligations, as indicated by judicial proceedings and/or steps taken by other regulators, or third parties such as Trading Standards, OIA, CMA, students or their representative bodies
- does not have management capacity and capability to ensure that it is able to continue to meet its ongoing conditions of registration.

Condition C2: Student complaints scheme

Condition C2: The provider must:

i. Cooperate with the requirements of the student complaints scheme run by the Office of the Independent Adjudicator for Higher Education, including the subscription requirements.

ii. Make students aware of their ability to use the scheme.

Summary

Applies to: all registered providers.

Initial or general ongoing condition: ongoing condition.

Legal basis: section 5 of HERA.

Notes

375. While it is not mandatory for the OfS to impose this condition of registration, section 89 of HERA amends the definition of qualifying institutions for the student complaints scheme for higher education so that all registered providers are required to become members of the scheme.

Guidance

Condition C2(i)

376. Cooperation with the requirements of the student complaints scheme is a general ongoing condition and is not assessed as an initial condition of registration.

377. In judging whether a provider is cooperating with the requirements of the student complaints scheme run by the OIA, material that the OfS may consider includes:

    a. Information that it receives from the OIA in relation to a registered provider's cooperation with the complaints handling scheme.

    b. Information that it receives from the OIA in relation to the payment of the OIA's fee.

Condition C2(ii)

378. Making students aware of their ability to use the student complaints scheme is a general ongoing condition and is not assessed as an initial condition of registration.

379. In judging whether a provider is making its students aware of their ability to use the student complaints scheme, material that the OfS may consider includes information published on the provider's website and in its contractual and marketing and admissions materials.

Assessment

380. The OfS will assess, as part of its routine monitoring activity, the way that a provider draws the attention of its students to the OIA scheme in its marketing and contractual information.

Condition C3: Student protection plan

Condition C3: The provider must:

i. Have in force and publish a student protection plan which has been approved by the OfS as appropriate for its assessment of the regulatory risk presented by the provider and for the risk to continuation of study of all of its students.

ii. Take all reasonable steps to implement the provisions of the plan if the events set out in the plan take place.

iii. Inform the OfS of events, except for the closure of an individual course, that require the implementation of the provisions of the plan.

Summary

Applies to: all registered providers.

Initial or general ongoing condition: initial and ongoing condition.

Legal basis: sections 5 and 13 of HERA.

Guidance

Condition C3(i)

381. 'Student protection plan' means a document or documents approved by the OfS under the condition imposed under sections 5 and 13(1)(c) of HERA.

382. To register, a provider is required to produce a student protection plan which meets the requirements set out below. The purpose of a student protection plan is to preserve the continuation and quality of study for all of the provider's students whenever a risk to the continued study of students crystallises.

383. The student protection plan must be tailored to the specific circumstances of an individual provider. It must include the provider's assessment of the risks to the continuation of study of the provider's students, the likelihood that those risks will crystallise, and the severity of the impact on students should the risks crystallise. The range of risks considered by the provider should include, but not be limited to, the risk that:

- the provider as a whole is no longer able to operate or no longer intends to operate
- the provider is no longer able to award the qualifications for which its students are registered because the OfS has varied or revoked the provider's degree awarding powers, or a validating partner has withdrawn validation
- one or more of the locations at which the provider delivers courses to students is no longer available

- the provider is no longer able to deliver courses to students in one or more subject areas and/or departments
- the provider is no longer able to deliver one or more courses to students, particularly if course closures are likely in the next three years
- the provider is no longer able to deliver material components of one or more courses, particularly if there are areas of vulnerability, such as single person dependencies for teaching
- the provider is no longer able to deliver one or more modes of study to students, particularly if withdrawal of a mode of study is likely
- the provider is no longer able to recruit or teach a particular type of student.

384. On the basis of the provider's risk assessment, the plan must set out the measures that the provider has put in place to mitigate those risks that it considers to be reasonably likely to crystallise. This will include existing procedures that are in place to respond should risks crystallise, and the steps the provider will take to ensure that mitigations are fair and reasonable for students. This will need to take into account the diversity of students and their needs, including for example considerations of mobility, educational need, parity of course content or financial consequences. The provider should make a commitment to offer students advice and support in the event that any of the risks to the continuation of study crystallise.

385. The plan should also contain information about the provider's refund and compensation policy for cases where it is not possible to preserve continuation of study.

386. The plan should be revised regularly to ensure that the risk assessment remains current and the mitigating measures remain practicable, relevant and effective. The plan should be produced in collaboration with students to ensure that their views, interests and needs are taken into account. The plan should be published in a clear and accessible way.

Condition C3(ii)

387. A provider will satisfy this condition by informing the OfS promptly of events that require the implementation of any of the provisions of the plan.

Condition C3(iii)

388. A provider will satisfy this condition by implementing the provisions of the plan when the events set out in the plan take place.

389. In judging whether a provider has implemented the provisions of its plan, material that the OfS may consider includes:

    a. Student complaints, whether to the OIA or elsewhere, that the provisions of the provider's plan have not been implemented as set out in the plan.

    b. Information from the provider about how it intends to implement its plan.

Assessment

390. During the initial registration process, the OfS will complete a risk assessment for a provider to determine the extent of the risk of a future breach of any of its ongoing conditions of registration. The OfS will assess the provider's student protection plan in the context of this risk assessment and in the context of the provider's own assessment of risks to the continuation of study for its students. This will allow the OfS to decide whether the provisions of the plan are appropriate for the provider's circumstances and for its students. Where the OfS considers there to be an increased risk of a future breach and/or an increase in the risk to students' continuation of study, it may require additional mitigation in the provider's student protection plan before this can be approved. It may also impose specific conditions of registration where it considers additional mitigation to be necessary.

391. Registration will not take place, if the mitigations in a provider's student protection plan are considered inadequate to the risks identified by the provider or by the OfS.

392. A provider that is a further education college or a sixth form college will need to ensure that the measures in its student protection plan align with other student protection measures that apply in the further education sector, such as special administration regimes.

393. Where the OfS's routine monitoring activities identify a change in the extent of the regulatory risk for an individual provider or in the risk to the continuation of study for the provider's students, it may seek assurance that the measures in the provider's student protection plan remain sufficient to mitigate risks identified. The OfS may require further mitigating measures to be included and/or may require the plan to be revised and provided to the OfS on a more frequent basis.

Behaviours

394. In order to determine whether or not a provider is complying with this condition on an ongoing basis, the OfS's judgement will be informed by the provider's behaviour, as well as information submitted by the provider or available to OfS.

395. The following are non-exhaustive examples of behaviours that may indicate compliance with this general ongoing condition:

- a clear commitment to preserving the continuation of study for all current and potential students in the provider's student protection plan
- a plan that is credible, deliverable and its measures will in practice protect students
- publication of the plan and making it available to all current and prospective students and staff
- regular review and updating of the plan, preferably on an annual basis
- the measures in the plan are fair and viable, and take into account the potential

impact on the diversity of students and their needs, including for example considerations of mobility, educational need, parity of course content or financial consequences

- the provider works with its students when creating and implementing the student protection measures, including giving adequate notice of changes to courses and providing appropriate support to all students.

396. The following are non-exhaustive examples of behaviours that may indicate non-compliance with these general ongoing conditions. The provider:

- fails to publish its plan in a clear and accessible way
- is not meeting the obligations set out in its plan
- fails to submit an updated plan to the OfS as required
- does not regularly review its plan and fails to update the plan to reflect changes in its circumstances
- fails to engage with the OfS about the content of, and any updates to, its plan
- has a plan that is not tested or fails to take into account the diversity of its students and their needs
- fails to provide clear information about when and how the measures in its plan may be triggered.

Condition C4: Student protection directions

Condition C4: Student Protection Directions

i. The provider must comply with any Student Protection Direction in circumstances where the OfS reasonably considers that there is a material risk that the provider will, or will be required by the operation of law to, fully or substantially cease the provision of higher education in England ("Market Exit Risk").

ii. A Student Protection Direction may be varied or revoked (wholly or in part) by express provision in a subsequent Student Protection Direction issued by the OfS in accordance with this condition of registration, and the OfS may otherwise revoke a Student Protection Direction by issuing a notice in writing to the provider.

iii. A Student Protection Direction (or, as the case may be, part of a Student Protection Direction) will cease to have effect in accordance with the following provisions:

a. in circumstances where a Student Protection Direction is varied or revoked (wholly or in part) by a subsequent Student Protection Direction, on and from the time and date that the subsequent Student Protection Direction takes effect; or

b. in circumstances where a Student Protection Direction is revoked by a notice in writing, on and from the time and date specified in that notice in writing.

iv. Where a Student Protection Direction ceases to have effect at any time (for any reason), that cessation does not in any way affect the ability of the OfS to investigate and/or take any form of regulatory or enforcement action in respect of any non-compliance with that Student Protection Direction (whether or not the non-compliance remains ongoing in nature) which took place during the period that the Student Protection Direction was in effect.

v. For the purposes of this condition:

"Student Protection Direction" means, irrespective of whether or not an approved student protection plan exists, a direction requiring a provider to:

a. produce a special type of plan setting out Student Protection Measures for approval by the OfS and thereafter implementation by the provider (both in timescales specified in writing by the OfS) ("Market Exit Plan");

b. instead or in addition to a), put in place and/or implement any Student Protection Measures which are specified in writing by the OfS (in timescales specified in writing by the OfS); and

c. do (or refrain from doing) such other consequential, ancillary or incidental actions, as the OfS considers is reasonably necessary, for ensuring that a Market Exit Plan or Student Protection Measures are put in place and/or implemented in an effective and expedient manner (including, but not limited to, compliance with general ongoing condition of registration C3, publishing information, deploying human resources, and

consulting a registered insolvency practitioner on the feasibility of the Market Exit Plan (all in timescales specified in writing by the OfS)).

"Student Protection Measures" means measures (including supporting arrangements and procedures) which the OfS reasonably considers are proportionate in the context of Market Exit Risk and fall within the scope of the following descriptions:

a. Teach out: ensuring students are able to complete their intended course of study and achieve a qualification that could reasonably have been expected, or complete their current academic year or term and receive an exit award or credit to recognise their academic achievement at the provider;

b. Student transfer: ensuring students are able to transfer to another higher education provider to continue and complete their studies, including providing students with appropriate support to understand their options and make an informed choice, and to ensure that administrative arrangements are in place to facilitate such transfers;

c. Exit awards and unit certification: providing students with a formal record of their achievement at a provider;

d. Information, advice and guidance for students: ensuring all students receive effective information, advice, guidance and support in relation to any Market Exit Risk;

e. Complaints: ensuring that robust arrangements are in place for handling and responding to complaints from students;

f. Refunds and compensation:

    i. offering students refunds of tuition fees and other costs (for example accommodation costs and other living costs) incurred by students for whom continuation of study has been disrupted as a result of any Market Exit Risk;

    ii. offering students compensation to cover any financial costs incurred by students as a result of any Market Exit Risk;

g. Archiving arrangements: ensuring that arrangements are in place to enable students to access evidence of their academic achievements in the future, including arrangements with third parties to store records if necessary.

This condition does not apply to Further Education Bodies (as defined in section 4 of the Technical and Further Education Act 2017).

Summary

Applies to: all registered providers, except Further Education Bodies (as defined in section 4 of the Technical and Further Education Act 2017) as these can be subject to the special administration regime in place for further education (detailed in Part 2 chapter 4 of that Act).

Initial or general ongoing condition: general ongoing condition

Legal basis: section 5 of HERA

Guidance

Condition C4(i)

396A. Matters that might cause the OfS to reasonably consider that there is a material risk that a provider will, or will be required by the operation of law to fully or substantially cease the provision of higher education in England ("Market Exit Risk") include, but are not limited to:

a. where a provider cannot demonstrate that it is likely to have access to sufficient funds (for example, operating cash funds, investments, or funding that can be released from surplus assets or obtained from other sources) to meet its day-to-day costs, and any other liabilities due, within the next 12 months, including where a provider's ability to meet its day-to-day costs or liabilities is likely to be reliant on specific factors and the OfS judges that there is material uncertainty about whether these will be delivered in practice. These specific factors might include, but are not limited to:

i. Securing additional borrowing or investment;

ii. Delivering significant business restructuring or other cost saving measures;

iii. The decision or actions of a third party.

396B. For the avoidance of doubt, any assessment would need to be considered on its own facts, and matters other than those in paragraph 1 above may also lead the OfS to conclude that there is a Market Exit Risk.

396C. The reference to a provider being "required by the operation of law" to fully or substantially cease the provision of higher education in England includes any relevant law which might have that effect, including insolvency law.

Condition C4(v)

396D. 'Student protection plan' means a document or documents approved by the OfS under initial and general ongoing condition C3, imposed pursuant to sections 5 and 13(1)(c) of HERA.

396E. When the OfS considers whether it is necessary to impose a Student Protection Direction, it will consider all relevant factors and place particular weight on the importance of protecting the interests of current and future students.

396F. Where the OfS judges it necessary to impose a Student Protection Direction, it will normally expect to have engaged with a provider before doing so. Where the OfS judges that students

would not be disadvantaged by any delay to the imposition of a Direction, it may consult with a provider on all or part of a Student Protection Direction.

396G. A provider registered in the Approved (fee cap) category is subject to the public sector equality duty under section 149 of the Equality Act 2010. The OfS expects any registered provider directed to develop and/or implement any Student Protection Measures, to consider the needs of its students, and in particular to develop and implement the measures in a way that minimises the adverse impact of the situation on students with protected characteristics (as defined under section 4 of the Equality Act 2010).

396H. Where a Student Protection Direction requires the production of a Market Exit Plan, or requires a provider to put in place and/or implement any Student Protection Measures, the OfS may or may not direct the publication of that plan or of information about those measures. If the OfS judges that publication is in the public interest, the OfS is likely to direct a provider to publish the Market Exit Plan and/or information about the Student Protection Measures. The circumstances in which the OfS might judge publication to be in the public interest include (but are not limited to) where it is in the interests of current or future students to have information contained in a Market Exit Plan and/or Student Protection Measures available (for example to enable students to make informed choices about their future plans for study).

396I. For the avoidance of doubt, any type of a direction under this condition can be issued and notified in any written form or manner, including by notifying a provider electronically.

Condition D: Financial viability and sustainability

Condition D: The provider must:

i. Be financially viable.

ii. Be financially sustainable.

iii. Have the necessary financial resources to provide and fully deliver the higher education courses as it has advertised and as it has contracted to deliver them.

iv. Have the necessary financial resources to continue to comply with all conditions of its registration.

Summary

Applies to: all registered providers.

Initial or general ongoing condition: initial and ongoing condition.

Legal basis: section 5 of HERA.

Notes

397. The information submitted by a provider to demonstrate that it satisfies this ongoing condition of registration will also be used by the OfS to monitor and report on financial sustainability under section 68 of HERA.

398. The OfS forms judgements as to a provider's financial performance and position solely for its own purposes. No responsibility is accepted to the provider or any third party. Neither the provider nor any third party may place any reliance upon such a judgement.

Guidance

Condition D(i)

399. 'Financially viable' means that the OfS judges that there is no reason to suppose the provider is at material risk of insolvency within a period of three years from the date on which the judgement is made.

400. 'Insolvency' means a provider being unable to pay its debts as they fall due.

401. Being unable to pay debts as they fall due has the meaning given by section123 of the Insolvency Act 1986, substituting 'the OfS' for 'the court' in section 123(2).

402. In judging whether a provider is at material risk of insolvency, material that the OfS may consider includes:

    a. The provider's most recent audited financial statements.

b. The provider's financial forecasts.

c. Previous audited financial statements, to identify trends in the provider's financial situation.

d. Other information concerning the provider's financial situation.

e. The provider's current obligations.

f. Obligations that it is reasonable to assume the provider intends to undertake within the next three years, having regard to any announcements it may make, its stated objectives, business plans, and other relevant material.

403. The OfS will have regard to the availability of financial facilities or legally binding obligations of financial support from third parties (which includes any entity that is not the provider itself). A legally binding obligation of financial support means an unqualified undertaking enforceable by court action to meet the financial obligations of the provider as they fall due, or to put the provider in funds so that it may itself meet those obligations, if the provider is unable to do so. In having such regard:

a. The OfS will consider the terms of any financial facilities and in particular whether they are repayable on demand or are term facilities, and if term facilities the date of expiry.

b. Where facilities are on demand or will expire during the period in respect of which a judgement as to solvency is being made, the likelihood of the facilities being called in or renewed and if so on what terms.

c. Where a legally binding obligation of financial support is in place, the duration and other terms of that obligation and the overall financial strength of the counterparty, evidenced by audited financial statements of the counterparty and if necessary its ultimate parent company.

404. It will be for the provider to ensure that the OfS is fully informed as to its financial facilities, and it will be expected to consent to the OfS making direct enquiry of the finance provider if requested to do so. The OfS may draw inferences from a failure to provide such consent.

405. OfS will not place weight on a legally binding obligation of financial support from third parties unless that obligation is:

a. Governed by the laws of England and Wales.

b. Subject to the exclusive jurisdiction of the Courts of England and Wales.

c. Expressed to be directly enforceable by the OfS in addition to the provider.

406. The OfS is unlikely to place significant weight on a legally binding obligations of financial support from third parties unless the third party is incorporated in the United Kingdom or in a state in which a judgement of the Courts of England and Wales may be directly enforced.

407. The OfS will not have regard to non-legally binding expressions of financial support from third parties, including a parent company of the provider.

Condition D(ii)

408. ‘Financially sustainable’ means the OfS judges that the provider’s plans and protections show that it has sufficient financial resources to fulfil conditions D(iii) and D(iv) for the period of five years from the date on which the judgement is made, and that it is likely to be able to operate in accordance with these plans and projections over this period.

409. In judging whether a provider is financially sustainable, material that the OfS may consider includes:

    a. Whether the provider is financially viable.

    b. The material set out under guidance on condition D(i) above.

    c. Whether the provider’s current and recent audited financial statements show that it is generating appropriate levels of cash and profit or surplus.

    d. The causes of any losses made or deficits incurred, whether these were planned or unplanned, and the credibility of the provider’s actions or plans to eliminate such losses or deficits.

    e. The provider’s balance sheet including the extent to which assets exceed liabilities, and the ability to liquidate assets if required.

    f. Obligations that it is reasonable for the OfS to expect a registered provider comparable to the provider to incur, regardless of the provider’s actual intention, to account for what the OfS considers to be appropriate investment in the provider’s staff, estate and physical and virtual infrastructure to deliver a high quality learning experience.

    g. Obligations that the provider intends to, or has announced that it is considering, incurring. This will include obligations implied by announced or adopted plans and intentions, even if not detailed within those plans or intentions.

410. The OfS will have regard to the availability of financial facilities or legally binding obligations of financial support from third parties. In having such regard the OfS will consider the same material and apply the same approach as detailed above under condition D(i).

Condition D(iii)

411. In judging whether a provider has the necessary financial resources to provide and fully deliver the higher education courses as it has advertised and as it has contracted to deliver (thus enabling students to complete their courses), material that the OfS may consider includes:

    a. Any or all material set out in guidance on condition D(i) and D(ii) above.

    b. Student complaints, whether to the OIA or elsewhere, that courses have been/are not being delivered as advertised or as contracted.

    c. Staff complaints that courses have been/are not being delivered as advertised or as contracted.

412. For the avoidance of doubt, this condition does not oblige a provider to continue to offer a course or part of a course that it judges to be no longer financially viable, provided in doing so it honours any obligations already entered into.

Condition D(iv)

No specific guidance.

Assessment

413. During the initial registration process the OfS will carry out a comprehensive assessment of a provider's financial performance and position, to inform the OfS's risk assessment under section 7 of HERA. This will enable the OfS to identify any particular pressure points and areas of risk and to ensure that the ongoing conditions of registration that are applied to the provider on registration are proportionate to regulatory risk.

414. A provider can demonstrate compliance with the initial condition on financial viability and sustainability by submitting satisfactory evidence of its past and current financial performance (where a provider has operated previously), as well as forecasts. The evidence[22] that the OfS would normally require is:

- **Full audited financial statements** (for the last three years, where a provider has been in operation and providing higher education for this period, or, where a provider has been in operation for less than three years, for the period in which the provider has been in operation and providing higher education) comprising (as set out in FRS102) statement of financial position; either a statement of comprehensive income or a statement of income and retained earnings; statement of changes in equity; statement of cash flows; and notes to the financial statements. The auditor must be independent of the provider, and of the preparer of the financial statements, and be listed on the Register of Statutory Auditors.

- **Financial forecast tables** approved by the provider's governing body (including the current year budget and four year forecasts for financial and student number data, as well as underlying details of any growth or divestment plans).

- **Commentary to support the financial forecast tables** to ensure that the OfS understands the provider's context and the assumptions underlying its forecasts.

415. Where relevant, the OfS will also seek information about:

- The provider's business plan (in particular where the provider is financially weak or new to the market, with no or only a short track record of operations and/or delivery of higher education), including robust and well evidenced forecasts and assumptions.

- Legally binding parental or other legally binding deed of undertaking, including evidence that the guarantor can fulfil the deed (if a provider is relying on such a guarantee to meet the condition) – this may include audited financial statements where the guarantor is a company or similar entity (see paragraph 403 above for what guarantees are acceptable) and proof of the guarantor's identity and funding sources.

- Any other relevant supporting evidence, such as endorsement by the validating body for any student numbers forecasts, access to bank and or equity finance, and any restrictions on funds (for example, by charitable trusts).

[22] The OfS will respect commercial confidentiality, within the bounds of the requirements of the Freedom of Information Act 2000.

416. In order to demonstrate compliance with the general ongoing condition on financial viability and sustainability, providers that the OfS considers not to be posing specific risks in this area, and that are notified accordingly, will be required to report the minimum level of necessary information and data to the OfS on a regular basis. The minimum information required for this condition is:

- Full, audited financial statements as per FRS102[23] and in accordance with the OfS's accounts direction, to be submitted on an annual basis.
- Financial forecasts, to be submitted annually for most providers. The OfS may choose to vary the frequency, depending on provider size and/or risk, and in line with condition I.

417. This information will be used to inform lead indicators, described in part III above.

418. In addition, under condition F3, a provider is required to inform the OfS of any changes that might affect its ability to comply with the general ongoing conditions, including this condition.

419. If any of the lead indicators, or any other information available to the OfS, trigger concerns that the provider's risk profile in this area has changed, and/or that the provider may be at increased risk of no longer fully complying with the condition, the OfS may request further information, and may revisit the initial, comprehensive assessment of the provider's financial viability and sustainability.

420. Providers that are not considered to be at low risk of breaching this condition on registration or as a result of monitoring, may be subject to specific ongoing conditions that could be associated with additional reporting requirements, to enable the OfS to more closely monitor and mitigate the provider-specific risks. The procedure for imposing such a condition after registration is set out in section 6 of HERA.

Behaviours

421. In order to determine whether or not a provider is complying with this condition on an ongoing basis, the OfS's judgement will be informed by the provider's behaviour, as well as information submitted by the provider or available to the OfS.

422. The following are non-exhaustive examples of behaviours that may indicate compliance with this general ongoing condition:

- financial forecasts and business plans, including underlying assumptions, are credible and show how resources will be used
- the provider complies with the OfS's accounts direction
- financial forecasts are met

[23] Within the requirements of FRS102, a provider should use the accounting rules most appropriate to its circumstances and should discuss with its auditor whether it is appropriate to follow the FEHE SORP. It is not a requirement of the OfS that it should do so.

- the provider operates within existing financial facilities
- invoices are paid within terms (save where disputed on substantial grounds)
- unplanned changes to courses or activities are avoided
- registration fees are paid on time
- accounts are filed on time.

423. The following are non-exhausted examples of behaviours that may indicate non-compliance with these general ongoing conditions:

- forecasts and/or business plans are not credible, and/or not based on accurate data and information
- the provider does not comply with the OfS's accounts direction
- financial forecasts are not met
- new and extended financial facilities are sought and used
- existing financial facilities are revoked, not renewed, or have more onerous terms imposed on them
- invoices are not paid within terms (except if disputed on substantial grounds)
- court judgements are not paid within terms
- unplanned or disorderly changes to courses or activities are made
- accounts are overdue for filing.

Condition E1: Public interest governance

Condition E1: The provider's governing documents must uphold the public interest governance principles that are applicable to the provider.

Summary

Applies to: all registered providers.

Initial or general ongoing condition: initial and ongoing condition.

Legal basis: sections 13 and 14 of HERA.

Guidance

424. 'Governing documents' means the documents adopted, or that should have been adopted by the provider, that describe any of the provider's objectives or values, its powers, who has a role in decision making within the provider, how the provider takes decisions about how to exercise its functions, or how it monitors their exercise. This test will be broadly rather than narrowly applied. Where a document in part deals with any such matters, and in part with other matters, the whole of the document is a 'governing document'.

425. Depending on the legal form of the provider its 'governing documents' may include a Royal Charter, Statutes and Ordinances, articles of association, or Instruments of Government and/or a trust deed or deeds. They are also likely to include documents such as schemes of delegation, terms of reference of committees to which significant functions have been delegated, the provider's policies on matters such as management of conflicts of interest, support for freedom of speech or academic freedom, and/or member/shareholder agreements where these may influence the operation of the provider.

426. 'Uphold the public interest governance principles' means as a minimum to reflect them, and where a public interest governance principle requires an active step to be taken, to provide a suitable framework to ensure that that step is identified, defined, taken, and can be shown to have been taken.

427. 'The public interest governance principles that are applicable to the provider' means the principles identified as applicable in Annex B.

428. 'Governing body' (used below) has the meaning given by section 85 of HERA.

429. In judging whether a provider's governing documents uphold the public interest governance principles that are applicable to the provider, material that the OfS may consider includes:

    a. The provider's governing documents.

    b. The provider's self-assessment of those documents.

    c. The size, complexity and legal form of the provider.

Assessment

430. During the initial registration process the OfS will carry out an assessment of the extent to which a provider's governing documents uphold the public interest governance principles. A provider is required to submit its governing documents and a self-assessment of how those documents uphold the public interest governance principles.

431. If a provider follows a governance code, the provider's self-assessment may point to its use of the code as evidence that its governing documents uphold the relevant public interest governance principles. It is the provider's responsibility to demonstrate how use of its chosen code ensures that its governing documents uphold the public interest governance principles. Where the provider's chosen code does not deliver all of the principles, the provider will need to demonstrate separately how its governing documents uphold the remaining principles.

432. Alternatively, a provider may wish to demonstrate that its governing documents uphold the public interest governance principles without the adoption of a particular code of governance.

Behaviours

433. The following are non-exhaustive examples of behaviours that may indicate compliance with this condition. The provider:

- notifies the OfS in advance of any changes to its governing documents that might affect the public interest governance principles, and submits the revised documents
- gives timely notification to the OfS of relevant changes in its governing documents.

434. The following is a non-exhaustive example of behaviour that may indicate non-compliance with this condition:

- the provider makes changes to its governing documents that affect the public interest governance principles without submitting an updated version to the OfS as soon as reasonably practicable following the change.

Condition E2: Management and governance

Condition E2: The provider must have in place adequate and effective management and governance arrangements to:

i. Operate in accordance with its governing documents.

ii. Deliver, in practice, the public interest governance principles that are applicable to it.

iii. Provide and fully deliver the higher education courses advertised.

iv. Continue to comply with all conditions of its registration.

Summary

Applies to: all registered providers.

Initial or general ongoing condition: initial and ongoing condition.

Legal basis: section 5 of HERA.

Guidance

435. An arrangement is 'adequate' if it is capable of delivering its stated or implied objective.

436. An arrangement is 'effective' if it is operated so as to deliver its stated or implied objective and those objectives are delivered as a result.

437. 'Governing documents' (used below) has the meaning set out for Condition E1.

438. 'Operate in a way that is consistent with its governing documents' includes that the provider seeks to achieve its objectives, that its decisions are informed by its values, and that decisions are in fact taken by the body or individual identified in the governing documents as taking those decisions, acting without direction coercion or covert influence.

439. 'Governing body' (used below) has the meaning given by section 85 of HERA.

440. As different providers will have different levels of complexity (including size, nature of the business and legal form), different management and governance arrangements may be appropriate for different providers. Arrangements that may be appropriate for small providers might not be appropriate for large, complex providers, those with degree awarding powers, or with university title. A provider will therefore need to demonstrate that its particular management and governance arrangements are appropriate for its size, complexity and risk environment.

441. In judging whether a provider's arrangements are adequate, material that the OfS may consider includes:

    a. The provider's management and governance arrangements.

    b. The provider's self-assessment of those arrangements.

c. The size, complexity and legal form of the provider.

d. Any governance code to which the provider says it is committed, the appropriateness of this code, and the visibility and strength of that commitment.

442. In judging whether a provider's arrangements are effective, material that the OfS may consider includes:

a. The provider's management and governance arrangements.

b. The provider's self-assessment of those arrangements.

c. Records of how the provider takes and monitors its decisions, such as agenda, reports, and minutes.

d. Whether decisions are taken in public or in private.

e. The substance of decisions and actions taken by the provider.

f. The outcomes achieved by the provider, including whether courses are delivered as advertised and whether conditions of registration are met.

g. Whether the provider takes appropriate action to mitigate increased risk of a breach of its conditions of registration.

443. In judging whether a provider has in place adequate and effective management and governance arrangements that operate in accordance with its governing documents, material that the OfS may consider includes:

a. The provider's governing documents.

b. The provider's self-assessment of those documents.

c. Records of how the provider takes and monitors its decisions, such as agenda, reports, and minutes.

d. Whether decisions are taken in public or in private.

e. The substance of decisions and actions taken by the provider.

444. In judging whether a provider has in place adequate and effective management and governance arrangements to deliver, in practice, the public interest governance principles that are applicable to it, material that the OfS may consider includes:

a. The actions of the provider and whether they deliver the applicable public interest governance principles in practice, including but not limited to:

i. Whether there is a student member of the provider's governing body, where the provider's legal form does not preclude this.

ii. Regular publication of clear information about its arrangements for securing value for money including, in a value for money statement, data about the

sources of its income and the way that its income is used.

iii. Inclusion in the provider's audited financial statements of information about the pay of senior staff in accordance with the OfS's accounts direction, and publication of this information.

iv. Whether the governing body publishes its written commitment to comply with the higher education remuneration code published by the CUC, and the visibility and strength of that commitment, or any explanation provided by the governing body about why it has not published its written commitment to comply with that remuneration code.

v. Publication of a code of practice to ensure compliance with the statutory duty on freedom of speech in section 43 of the Education (No.2) Act 1986.

Assessment

445. The OfS will assess the extent to which a provider's governance arrangement are adequate and effective. The evidence required for this purpose may vary from provider to provider. When it first seeks registration each provider is required to submit a self-assessment of the adequacy and effectiveness of its management and governance arrangements. The OfS may require additional supporting evidence from the provider, and this may include but not be limited to:

- information that demonstrates that the provider is owned and controlled by fit and proper persons
- information to provide transparency of inter-relationships between companies/organisations
- membership and terms of reference of the governing body and its committees
- evidence of risk management tools and processes (e.g. a risk register)
- Audit Committee annual report (where appropriate)
- internal audit plan and annual report (where appropriate)
- the report of any recent effectiveness review of the governing body and any of its committees, and the actions taken in response to the report
- information about governor (or equivalent) recruitment and induction.

446. Once registered, and in order to demonstrate compliance with the general ongoing condition, the OfS will require a provider that it considers to pose no increased risk in this area, to make publicly available the minutes of the meetings of its governing body and committees, except where such material is genuinely confidential.

447. In addition to this minimum, providers in receipt of public grant funding subject to the additional public interest governance principles, are likely to be required to provide additional information, including but not limited to:

- an opinion by an external auditor that the provider is using the funds for the purposes given
- information about value for money for public grant funding
- an opinion from an audit committee and/or internal audit on the adequacy and effectiveness of arrangements for securing value for money from such funding.

448. Where the OfS considers that the risk of a provider breaching this condition is not low, it may require additional information to be provided and may put in place additional monitoring. This may include, but not be limited to, the information set out in paragraph 445 above.

449. The OfS may carry out an on-site review of the provider's management and governance arrangements, where it considers this to be necessary or desirable to confirm that a provider satisfies the initial or ongoing condition. The need for, and frequency of, such reviews will be proportionate to the OfS's assessment of risk. A provider for which the OfS determines that the risk of a breach is not low is more likely to require such a review.

Behaviours

450. The following are non-exhaustive examples of behaviours that may indicate compliance with this condition:

- the provider adopts and follows a recognised and appropriate governance code
- the provider publicly explains its approach to the remuneration of senior staff and remuneration decisions are transparent
- the provider publishes information about senior staff pay as required by the OfS's accounts direction
- the provider follows and adheres to the principles and structures set out in its governing documents
- the provider's actions appear to align with its objectives and values
- the provider complies with its other statutory duties
- the provider takes responsibility for its own decision making, and does so in an open and accountable way
- the provider provides timely, accurate and complete information to the OfS, a designated body, or other person nominated by the OfS, and to its students and other stakeholders
- the provider regularly reviews the adequacy and effectiveness of its own governance arrangements, with external input, particularly with regard to the public interest governance principles, and to course delivery and compliance with its conditions of registration and takes appropriate action

- governing documents, as described above, are readily and publically available
- delegations are appropriate, reserving important matters to the governing body while delegating matters that may require specialist detailed scrutiny, or that may be insufficiently important ordinarily to require governing body attention
- full reports are provided to decision making bodies within the provider to inform their work
- full minutes of decisions are kept
- reports and minutes are in the public domain, and the designation of material as confidential is kept to the minimum necessary
- the provider maintains a public register of conflicts of interest and such conflicts are appropriately managed in practice
- the provider ensures that the use to which it puts funds received from whatever source is consistent with the purposes for which those funds were given (regularity)
- the provider provides sufficient information on a regular basis to demonstrate it operates in an open and accountable way, and provides and publishes information about how it ensures value for money.

451. The following are non-exhaustive examples of behaviours that may indicate non-compliance with these conditions:

- the provider does not act openly, honestly, accountably and with integrity
- the provider is unable or unwilling to provide timely, accurate and complete information to the OfS, a designated body or other person nominated by the OfS, and to its students and other stakeholders
- the provider does not review the adequacy and effectiveness of its own governance arrangements, in particular with regard to the public interest governance principles and to ensure course delivery and compliance with its conditions of registration, or it carries out such a review but does not take appropriate action
- delegations are inappropriate, either delegating important matters below the governing body or retaining too much material for the governing body and so reducing its ability to scrutinise important issues
- not all governing documents, as described above, are readily and publically available
- reports to or minutes of decision making bodies are perfunctory, or designate extensive material as confidential without adequate reason
- students or staff complain that higher education courses are not delivered as advertised
- conditions of registration are breached and/or steps are not taken to mitigate an increased risk of a breach

- a provider does not engage with the OfS, obstructs the OfS regulatory activity, and/or does not notify the OfS of any reportable events and/or does not submit the required information in relation to any condition
- a provider fails to comply with its other statutory obligations, as indicated by judicial proceedings and/or steps taken by other regulators
- the provider does not have sufficient management capacity and capability to ensure that it is able to continue to meet its conditions of registration
- the provider fails to comply with legislation on equality and diversity, and does not have regard to its policies on equality and diversity
- the provider misuses funding, for example through fraud, abuse of funds, financial mismanagement or irregularity
- the provider does not comply with conditions imposed on it by or under regulations made under s22 of the Teaching and Higher Education Act 1998 (financial support for students)
- the provider seeks to abdicate responsibility for decision making, and seeks steers from the OfS
- the provider does not provide sufficient information on a regular basis to demonstrate it operates in an open and accountable way, and does not provide and publish information about how it ensures value for money
- the provider fails to abide by its own freedom of speech code.

Condition E3: Accountability

Condition E3: The governing body of a provider must:

i. Accept responsibility for the interactions between the provider and the OfS and its designated bodies.

ii. Ensure the provider's compliance with all of its conditions of registration and with the OfS's accounts direction.

iii. Nominate to the OfS a senior officer as the 'accountable officer' who has the responsibilities set out by the OfS for an accountable officer from time to time.

Summary

Applies to: all registered providers.

Initial or general ongoing condition: ongoing condition.

Legal basis: section 5 of HERA.

Guidance

452. 'Governing body' has the meaning given by section 85 of HERA.

453. 'Accounts direction' means the document that the OfS publishes from time to time to set out its requirements for the content and publication of a provider's audited financial statements. The accounts direction will include, but not be limited to, the disclosures that the OfS requires in relation to:

    a. Senior staff pay in all registered providers.

    b. Those providers that are exempt charities.

454. The OfS's first accounts direction will require disclosures that include, but are not limited to:

    a. The number of staff with a basic salary of over £100,000 per annum, broken down into bands of £5,000.

    b. Full details of the total remuneration package and job title for each member of staff with a basic salary of over £150,000 per annum, including bonuses, pension contributions and other taxable benefits.

    c. A justification for the total remuneration package for the head of the provider and the provider's most senior staff.

    d. The relationship between the head of provider's remuneration and that of all other employees, expressed as a pay multiple.

455. 'Accountable officer' means a senior officer at the provider, who should normally be the head

of the provider, vice-chancellor, principal, chief executive or equivalent. An accountable officer who is not the most senior officer of the provider would only be accepted where the OfS considers that there is sufficient reason for this, for example, if the provider has a number of activities not all of which are related to its higher education provision, and there is a senior officer who is not the overall CEO but is responsible for the higher education activities.

456. In judging whether a provider's governing body accepts responsibility for its the interactions between the provider and the OfS, material that the OfS may consider includes:

a. The substance of the provider's interaction with the OfS and its designated bodies.

b. The substance of decisions and actions taken by the provider.

c. Whether the provider's interactions with the OfS and its designated bodies are open and honest.

457. In judging whether a provider's governing body ensures the provider's compliance with all of its conditions of registration, material that the OfS may consider includes:

a. Any breaches of the provider's conditions of registration.

b. The actions taken by the provider to mitigate an increased risk of a breach of conditions of registration.

c. The substance of the provider's responses to the OfS's regulatory requirements.

458. In judging whether a provider's governing body nominates to the OfS, a senior officer as the 'accountable officer' who shall be accountable to the OfS on behalf of the governing body, material that the OfS may consider includes:

a. The individual nominated as the accountable officer and their suitability.

b. The way in which the accountable officer discharges their responsibilities.

c. Whether the governing body promptly informs the OfS of any reasons that the nominated accountable officer is unable to discharge their responsibilities.

d. Whether the governing body promptly informs the OfS of a change of accountable officer.

Assessment

459. As part of its initial application for registration, the governing body of a provider must provide the OfS with the name, job title, and contact details of the individual it wishes to nominate as its accountable officer. If this individual is acceptable to the OfS, the OfS will write to that individual setting out the responsibilities of an accountable officer. The governing body must subsequently inform the OfS of a proposed change in the provider's accountable officer.

460. Where the OfS is not satisfied with the way in which the accountable officer is discharging their responsibilities, it may impose a specific condition of registration requiring the governing body to appoint a more suitable individual as accountable officer.

Condition E4: Notification of changes to the Register

Condition E4: The governing body of the provider must notify the OfS of any change of which it becomes aware which affects the accuracy of the information contained in the provider's entry in the Register.

Summary

Applies to: all registered providers.

Initial or general ongoing condition: ongoing condition.

Legal basis: section 8 of HERA – mandatory.

Guidance

461. The purpose of this condition is to ensure that the OfS is able to maintain its Register as an authoritative and accurate record of the providers for which it has regulatory oversight.

462. A provider must provide information whenever the information on the Register has become inaccurate. The provider is likely to be the primary source of updated information, and will be expected to be proactive in supplying this information.

463. The OfS requires a provider to inform it of any change within 28 days of the provider becoming aware of the change. This notification must be accompanied by any relevant supporting evidence to allow the OfS to verify that the change is required. The evidence required to verify a change will vary depending on the change, for example this might be the URL for a new website or proof of address where the contact address has changed. The OfS may ask for further information if it deems this necessary.

464. The OfS will update the Register with the latest information it has about a provider. Providers will be expected to notify the OfS if any of the changes the OfS has made to the Register have resulted in inaccurate information being published and to support this process, the OfS will require a provider to check and confirm its entry on the Register once a year.

Assessment

465. The OfS may request information from a provider if it wishes to verify the accuracy of information displayed on the Register, or to investigate any concerns that may have been brought to its attention that information may be incorrect or out of date.

466. Where inaccurate information is identified, the OfS may require the provider to supply an explanation or commitment to correct the information within a timescale specified in correspondence.

467. Where the OfS finds evidence that information is incorrect through the provider's mismanagement, negligence or deliberate intent to delay or conceal correct information

from appearing, it may take appropriate action which may include putting in place enhanced monitoring or specific ongoing conditions requiring, for example, a provider to supply evidence that they have checked and verified the data on a regular basis. The OfS may consider whether behaviour of this type represents an increased risk of a breach of other conditions of registration such as those for information or management and management and governance.

Condition E5: Facilitation of electoral registration

Condition E5: The provider must comply with guidance published by the OfS to facilitate, in cooperation with electoral registration officers, the electoral registration of students.

Summary

Applies to: all registered providers.

Initial or ongoing condition: ongoing condition.

Legal basis: sections 5 and 13 of HERA.

Guidance

468. 'Guidance published by the OfS' means directions set out by the OfS under this condition of registration.

469. 'Electoral registration officer' means a registration officer appointed under section 8(2) of the Representation of the People Act 1983.

470. 'The electoral registration of students' means the registration of students on a register of electors maintained by such an officer under section 9 of that Act.

471. In judging whether a provider has complied with guidance published by the OfS to facilitate, in cooperation with electoral registration officers, the electoral registration of students, material that the OfS may consider includes:

    a. The substance of decisions and actions taken by the provider.

    b. The provider's cooperation with electoral registration officers.

    c. The outcomes achieved by the provider, including whether students are registered on a register of electors.

Behaviours

472. The following are non-exhaustive examples of behaviours that may indicate compliance with this condition. The provider:

- provides information to an electoral registration officer when asked to do so in line with the legal requirement on it under regulation 23 of the Representation of the People (England and Wales) Regulations 2001
- has facilitated cooperation and an effective partnership with the electoral registration officer
- has provided its students with easily accessible information about how to register to vote.

473. The following are non-exhaustive examples of behaviours that may indicate non-compliance with this condition:

- an electoral registration officer reports a lack of cooperation from the provider
- the provider's students are not aware of how they should register to vote.

Condition F1: Transparency information

Condition F1: The provider must provide to the OfS, and publish, in the manner and form specified by the OfS, the transparency information set out in section 9 of HERA.

Summary

Applies to: all registered providers, subject to approval by Parliament.

Initial or general ongoing condition: ongoing condition.

Legal basis: section 9 of HERA – mandatory – and section 5.

Notes

474. Under section 9 of HERA, the OfS must impose an ongoing condition of registration requiring the governing bodies of certain registered providers, prescribed by regulations made by the Secretary of State, to provide to the OfS, and to publish, such information as the OfS requests in relation to one or more of the types of data set out in sections 9(2) and 9(3) of HERA.

Guidance

475. 'The transparency information' means such information as the OfS requests in relation to the following:

    a. The number of applications for admission on to higher education courses that the provider has received.

    b. The number of offers made by the provider in relation to those applications.

    c. The number of those offers accepted and the number of those who go on to register at the provider.

    d. The number of students who registered and went on to complete their course with the provider.

    e. The number of students who attained a particular degree or other academic award, or a particular level of such an award, on completion of their course with the provider.

476. In each case, the information that the OfS may request includes those numbers by reference to the following:

    - the gender of the individuals to which they relate
    - their ethnicity
    - their socio-economic background.

477. In judging whether a provider has provided to the OfS, and published, in the manner and form specified by the OfS, the transparency information set out in section 9 of HERA, material that the OfS may consider includes:

    a. The quality, reliability and timeliness of the transparency information provided to the OfS.

    b. The manner and form of the published transparency information.

    c. The accessibility of the transparency information published on the provider's website.

Assessment

478. The OfS will not ask for the transparency information when a provider first registers. After its initial registration, a provider must provide and publish its most recent transparency information on an annual basis. The OfS will publish technical guidance about the specification of information and the timing and format for its publication.

479. In order to satisfy this condition on an ongoing basis, a provider will need to ensure that the transparency information is published on its website so that it is easily accessible for students and for anyone who might be seeking this information.

480. While the condition requires that individual providers publish this information, and share the data with the OfS, the OfS may also make the data returned to it available through a central service and/or as an open dataset for use by other information providers.

481. The OfS will monitor the quality, reliability and timeliness of a provider's transparency information. It will also monitor the clarity and accessibility of the transparency information on the provider's website.

Behaviours

482. In order to determine whether or not a provider is complying with this condition on an ongoing basis, the OfS's judgement will be informed by the provider's behaviour, as well as information submitted by the provider or available to the OfS.

483. The following are non-exhaustive examples of behaviours that may indicate compliance with this general ongoing condition. The transparency information:

    - is provided to the OfS in the required format and by the published deadline
    - is published on the provider's website in the required form in an accessible place.

484. The following are non-exhaustive examples of behaviours that may indicate non-compliance with these general ongoing conditions. The transparency information:

    - is not provided to the OfS in the required format or on time
    - is not published in line with the guidance in an accessible place on the provider's website
    - is inaccurate or incomplete.

Condition F2: Student transfer arrangements

Condition F2: The provider must provide to the OfS, and publish, information about its arrangements for a student to transfer.

Summary

Applies to: all registered providers.

Initial or general ongoing condition: ongoing condition.

Legal basis: section 5 of HERA.

Guidance

485. 'A student transfer' is as defined as in section 38(2) of HERA.

486. In judging whether a provider has provided to the OfS and published information about its arrangements for a student to transfer, material that the OfS may consider includes:

   a. The information about arrangements for transfer provided to the OfS by the provider.

   b. The information about arrangements for transfer published by the provider.

   c. Any explanation from the provider about how it facilitates student transfer.

Assessment

487. Providers will demonstrate compliance with this condition by providing and publishing information on their transfer arrangements as described above.

488. If a provider fails to satisfy this condition of registration, the OfS may request further information from the provider and make this publicly available. It may also work with the provider to facilitate the provision of student transfer arrangements in accordance with section 38 of HERA.

Condition F3: Provision of information to the OfS

Condition F3: For the purpose of assisting the OfS in performing any function, or exercising any power, conferred on the OfS under any legislation, the governing body of a provider must:

i. Provide the OfS, or a person nominated by the OfS, with such information as the OfS specifies at the time and in the manner and form specified.

ii. Permit the OfS to verify, or arrange for the independent verification by a person nominated by the OfS of such information as the OfS specifies at the time and in the manner specified, and must notify the OfS of the outcome of any independent verification at the time and in the manner and form specified.

iii. Take such steps as the OfS reasonably requests to co-operate with any monitoring or investigation by the OfS, in particular, but not limited to, providing explanations or making available documents to the OfS or a person nominated by it or making available members of staff to meet with the OfS or a person nominated by it.

The requirements in paragraphs (ii) and (iii) do not affect the generality of the requirement in paragraph (i).

Summary

Applies to: all registered providers.

Initial or general ongoing condition: ongoing condition.

Legal basis: Section 8 of HERA – mandatory.

Guidance

489. The information that a provider must supply to meet this condition will depend on its category of registration and the OfS's assessment of the risk for that provider.

490. This condition also applies to any information held by any subcontractors that may be providing services on the provider's behalf.

491. In judging whether the governing body of a provider has provided the OfS, or a person nominated by the OfS, with such information as the OfS specifies at the time and in the manner and form specified, material that the OfS may consider includes:

    a. The quality, reliability and timeliness of information provided by the provider to the OfS, or to a person nominated by the OfS, in respect of any of the provider's conditions of registration or in respect of any of the OfS's functions.

    b. Whether the provider has properly reported 'reportable events' as defined below to the OfS and done so on the basis of the timeframe set out in the relevant F3 Notice.

    c. Whether a provider in receipt of student support funding provides the information necessary for the Student Loans Company (SLC) to administer student support in line

with regulations made under section 22 of the Teaching and Higher Education Act 1998. This information includes, but is not limited to:

i. Data related to eligible courses.

ii. Confirmation that the fee charged to a student correctly matches the student's course of study.

iii. Information about student registration and attendance.

iv. Information about any changes that may affect a student's eligibility for student support.

v. Timely information of a student's withdrawal from their course.

d. Whether the provider has in place sufficient and appropriate resource and expertise to be able to provide reliable and timely information.

492. In judging whether the governing body of a provider has permitted the OfS to verify, or arrange for the independent verification by a person nominated by the OfS, of such information as the OfS specifies at the time and in the manner specified and has notified the OfS of the outcome of any independent verification at the time and in the manner and form specified, material that the OfS may consider includes:

a. The substance of the actions taken by the provider to assist the OfS with the verification of information, or to provide information about the outcome of any independent verification.

b. The findings of data audit activity carried out by, or on behalf of, the OfS or another body.

493. In judging whether the governing body of a provider has taken such steps as the OfS reasonably requests to cooperate with any monitoring or investigation by the OfS, in particular, but not limited to, providing explanations or making available documents to the OfS or a person nominated by it or making available members of staff to meet with the OfS or a person nominated by it, material that the OfS may consider includes:

a. The substance and promptness of the actions taken by the provider to cooperate with any monitoring or investigation by the OfS and to provide access to information, documents, systems and people as the OfS deems necessary.

b. The credibility of any explanations given by the provider.

c. The availability, completeness and reliability of documents provided to the OfS.

d. The openness and honesty of members of staff with whom the OfS may ask to meet.

Reportable events

494. A reportable event is any event or matter that, in the reasonable judgement of the OfS, negatively affects or could negatively affect:

a. The provider's eligibility for registration with the OfS.

b. The provider's ability to comply with its conditions of registration.

c. The provider's eligibility for degree awarding powers, or its ability to comply with the criteria for degree awarding powers, where the provider:

   (i) holds degree awarding powers; or

   (ii) has submitted an application for degree awarding powers to the OfS, and for which the OfS has yet to reach a final decision.

d. The provider's eligibility for university title, where the provider:

   (i) holds university title; or

   (ii) has submitted an application for university title to the OfS, and for which the OfS has yet to reach a final decision.

In interpreting ‘the reasonable judgement of the OfS', the OfS will, as a matter of policy, consider whether a reasonable provider intent on complying with all of its conditions of registration and acting in the interests of students and taxpayers (rather than in its own commercial, reputational or other interests), would consider the event or matter to be material.

The OfS will set out in separate guidance from time to time further information about how it will apply this definition of a reportable event, including illustrative factors to assist a provider in reaching decisions about reporting. The OfS may also provide further clarification about reportable events in the drafting of Notices issued to providers under condition of registration F3.

Assessment

495. The OfS will assess, as part of its routine monitoring activities, the quality, reliability and timeliness of information supplied by a provider including through scheduled or ad hoc data audit activity. If the OfS has reason to believe that information received is not reliable, it may choose to investigate the matter. This investigation may result in additional steps to ensure compliance with condition F3, whether through enhanced monitoring or the imposition of specific ongoing conditions. The OfS may, for example, require the provider’s accountable officer to implement an agreed action plan to improve the provider’s information systems and processes and the oversight arrangements for these.

Condition F4: Provision of information to the DDB

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

Summary

Applies to: all registered providers.

Initial or general ongoing condition: ongoing condition.

Legal basis: section 8 of HERA – a mandatory.

Guidance

496. In judging whether the provider has provided the DDB with such information as the DDB specifies at the time and in the manner and form specified by the DDB, material that the OfS may consider includes:

   a. The quality, reliability and timeliness of information provided by the provider to the DDB.

   b. Whether the provider meets the DDB's published data collection requirements and timeframes.

   c. The substance of the provider's actions in response to data auditing activities carried out by, or on behalf of, the DDB or by the OfS.

   d. The findings of data audit activity carried out by, or on behalf of, the OfS.

Assessment

497. The DDB will provide the OfS with information about the quality, reliability and timeliness of information supplied by a provider. The OfS will assess such information from the DDB as part of its routine monitoring activities, including through scheduled or ad hoc data audit activity. If the OfS has reason to believe that information submitted to the DDB is not reliable, it may choose to investigate the matter. This investigation may result in additional steps to ensure compliance, whether through enhanced monitoring or the imposition of specific ongoing conditions. The OfS may, for example, require the provider's accountable officer to implement an agreed action plan to improve the provider's information systems and processes and the oversight arrangements for these.

498. [Not used]

Condition G1: Mandatory fee limit

Condition G1: A provider in the Approved (fee cap) category must charge qualifying persons on qualifying courses fees that do not exceed the relevant fee limit determined by the provider's quality rating and its access and participation plan.

Summary

Applies to: Approved (fee cap).

Initial or general ongoing condition: ongoing condition.

Legal basis: section 10 of HERA – mandatory.

Notes

499. Section 10 of HERA requires the OfS to impose a mandatory fee limit condition on providers within the Approved (fee cap) category of the Register, to secure that regulated course fees do not exceed a fee limit. Schedule 2 of HERA sets out that fee limits are determined on the basis of whether a provider has an agreed access and participation plan and according to their TEF award.

500. Section 11 of HERA requires the OfS to publish annually a list of all providers that are subject to a fee limit condition, and what that limits are in each case.

Guidance

501. In judging whether a provider in the Approved (fee cap) category is charging fees that do not exceed the fee limit determined by the provider's quality rating and any access and participation plan, material that the OfS may consider includes;

    a. The fees charged by the provider.

    b. The provider's quality rating.

    c. Any access and participation plan that is in force for the provider.

Assessment

502. Information about the fee limits that apply to a provider will appear in a provider's entry on the OfS's Register. The OfS will also publish an annual list of registered providers that have a fee limit condition and the level of that limit.

503. The OfS may request information from a provider to confirm the current or intended fees for all courses offered, to ensure that these comply with the relevant fee cap. Where the OfS identifies a breach of the relevant fee cap it will intervene, including by considering the use of sanctions. For example, the provider may be required to rectify incorrectly advertised fees or provide more detailed or regular information to the OfS about fees before they are advertised.

The OfS may also use its power to impose a monetary penalty to ensure that a provider did not retain the financial benefit of exceeding the fee cap.

Condition G2: Compliance with terms and conditions of financial support

Condition G2: The provider must comply with any terms and conditions attached to financial support received from the OfS and UKRI under sections 41(1) and/or 94(2) of HERA. A breach of such terms and conditions will be a breach of this condition of registration.

Summary

Applies to: All registered providers in receipt of financial support from the OfS or from UKRI.

Initial or ongoing condition: ongoing condition.

Legal basis: sections 5, 41(1) and 94(2) of HERA.

Notes

504. Section 41(1) of HERA allows the OfS to impose terms and conditions of funding, and section 94(2) of HERA allows UKRI to impose terms and conditions of funding. These are separate from, and in addition to, the conditions of registration applicable to a registered provider.

Guidance

505. 'Terms and conditions' means the content of the document(s) setting out the requirements placed on financial support, whether grant, loan or other payment, provided under sections 39, 40 and 93 of HERA which may relate to the specific or general uses of this funding. Terms and conditions will be set out by the OfS or UKRI when it makes funding allocations.

506. In judging whether a provider has complied with any terms and conditions attached to financial support received from the OfS and UKRI under sections 41(1) and/or 94(2) of HERA, material that the OfS may consider includes:

    a. Any breaches of the terms and conditions applied to the financial support received by the provider.

    b. The actions taken by the provider to ensure that terms and conditions are not breached.

    c. The provider's management and governance arrangements that ensure that the public interest governance principles applicable to providers in receipt of financial support are delivered in practice.

Assessment

507. If a provider fails to comply with the terms and conditions of financial support provided by the OfS or by UKRI, the OfS may request further information from UKRI or from the provider to enable it to investigate and take appropriate action if required. The terms and conditions may include information about any actions that may be taken in response to a breach.

508. Where the OfS is satisfied that a breach of terms and conditions of financial support has

occurred, it will also consider the steps it should take in response to the corresponding breach of this condition of registration. Such action may include, but not be limited to enhanced monitoring, for example to ensure closer scrutiny of future use of financial support, or the imposition of a specific condition of registration to require specific actions to support the delivery of funded projects such as the appointment of staff or implementation of an action plan. In cases of more serious mismanagement of financial support, the OfS may also impose a specific condition to restrict a provider's future eligibility for financial support.

Behaviours

509. The following are non-exhaustive examples of behaviours that may indicate compliance with this condition. The provider:

- complies with any terms and conditions attached to the financial support it receives
- has management and governance arrangements that are adequate and effective to ensure regularity, propriety and value for money.

510. The following are non-exhaustive examples of behaviours that may indicate non-compliance with this condition. The provider:

- fails to comply with any terms and conditions attached to the financial support it receives
- has management and governance arrangements that are not adequate or effective to ensure regularity, propriety and value for money.

Condition G3: Payment of OfS and designated body fees

Condition G3: The provider must pay:

i. Its annual registration fee and other OfS fees in accordance with regulations made by the Secretary of State.

ii. The fees charged by the designated bodies.

Summary

Applies to: all registered providers.

Initial or general ongoing condition: ongoing condition.

Legal basis: sections 5 and 13 of HERA.

Guidance

511. 'Annual registration fee' means the payment required by the OfS under section 70 of HERA.

512. 'Other OfS fees' means any payments required by the OfS under section 71 of HERA.

513. 'Fees charged by the designated bodies' means the payments required by the DQB under section 28 of HERA and the payments required by the DDB under section 67 of HERA.

514. The Secretary of State will make regulations in relation to the fees that the OfS may charge. Information about how such fees are calculated will be set out by the OfS in its fee model.

515. Fees charged by the designated bodies and the arrangements for paying these will be determined by the designated bodies.

516. In judging whether a provider has paid its annual registration fee and other OfS fees, material that the OfS may consider includes:

- The provider's record of paying its fees in full by the deadlines set by the OfS.

517. In judging whether a provider has paid the fees charged by the designated bodies, material that the OfS may consider includes:

- Information provided by the DQB or the DDB about the provider's record of paying its fees in full by the deadlines set.

Assessment

518. A provider that does not pay any initial registration fee required by the OfS, or any fee required by a designated body to provide advice to the OfS as part of the initial registration process will not be registered. Once a provider is registered, it is required to pay fees to the OfS and to the designated bodies in full and by the published deadlines. A provider that is required to pay fees to the DQB as part of an application for degree awarding

powers is required to pay such fees in full before the OfS will make an order to authorise DAPs.

519. Sanctions for the late payment of fees will be set out by the OfS and by the designated bodies. The OfS may also take account of any failure to pay fees in full or by the published deadlines as a breach of this condition of registration and may use its interventions or sanctions powers in response.

Annex A: Initial and general ongoing conditions of registration

The following table provides an at-a-glance summary of our initial and ongoing conditions of registration. The summaries below should not be relied upon for interpretation of our requirements. Readers should refer to the full wording of the conditions elsewhere in this document.

General ongoing conditions of registration		Initial or ongoing condition?	Approved (fee cap)	Approved
A: Access and participation for students from all backgrounds				
Condition A1	An Approved (fee cap) provider intending to charge fees above the basic amount to qualifying persons on qualifying courses must: Have in force an access and participation plan approved by the OfS in accordance with the Higher Education and Research Act 2017 (HERA). Take all reasonable steps to comply with the provisions of the plan.	Initial and ongoing	✓ (higher fee limit)	
Condition A2	An Approved provider or an Approved (fee cap) provider charging fees up to the basic amount to qualifying persons on qualifying courses must: Publish an access and participation statement. Update and re-publish this statement on an annual basis.	Initial and ongoing	✓ (lower fee limit)	✓
B: Quality, reliable standards and positive outcomes for all students				
Condition B1	The provider must ensure that the students registered on each higher education course receive a high quality academic experience.	Initial and ongoing	✓	✓

General ongoing conditions of registration		Initial or ongoing condition?	Approved (fee cap)	Approved
Condition B2	The provider must take all reasonable steps to ensure: a. each cohort of students registered on each higher education course receives resources and support which are sufficient for the purpose of ensuring: i. a high quality academic experience for those students; and ii. those students succeed in and beyond higher education; and b. effective engagement with each cohort of students which is sufficient for the purpose of ensuring: i. a high quality academic experience for those students; and ii. those students succeed in and beyond higher education.	Initial and ongoing	✓	✓
Condition B3	The provider must deliver positive outcomes for students on its higher education courses.	Initial and ongoing	✓	✓

General ongoing conditions of registration		Initial or ongoing condition?	Approved (fee cap)	Approved
Condition B4	The provider must ensure that: a. students are assessed effectively; b. each assessment is valid and reliable; c. academic regulations are designed to ensure that relevant awards are credible; d. academic regulations are designed to ensure the effective assessment of technical proficiency in the English language in a manner which appropriately reflects the level and content of the applicable higher education course; and e. relevant awards granted to students are credible at the point of being granted and when compared to those granted previously.	Initial and ongoing	✓	✓
Condition B5	The provider must ensure that, in respect of any relevant awards granted to students: a. any standards set appropriately reflect any applicable sector-recognised standards; and b. awards are only granted to students whose knowledge and skills appropriately reflect any applicable sector-recognised standards.	Initial and ongoing	✓	✓
Condition B6	The provider must participate in the Teaching Excellence Framework.	Ongoing	✓	✓

General ongoing conditions of registration		Initial or ongoing condition?	Approved (fee cap)	Approved
Condition B7	The provider must: a. have credible plans that would enable the provider, if registered, to comply with conditions B1, B2 and B4 from the date of registration; and b. have the capacity and resources necessary to deliver, in practice, those plans.	Initial	✓	✓
Condition B8	The provider must demonstrate that any standards to be set and/or applied in respect of any relevant awards granted to students who complete a higher education course provided by, or on behalf of, the provider (if registered), whether or not the provider is the awarding body, appropriately reflect any applicable sector-recognised standards.	Initial	✓	✓
C: Protecting the interests of all students				
Condition C1	The provider must demonstrate that in developing and implementing its policies, procedures and terms and conditions, it has given due regard to relevant guidance about how to comply with consumer protection law.	Initial and ongoing	✓	✓
Condition C2	The provider must: i. Co-operate with the requirements of the student complaints scheme run by the Office of the Independent Adjudicator for Higher Education, including the subscription requirements. ii. Make students aware of their ability to use the scheme.	Ongoing	✓	✓

General ongoing conditions of registration		Initial or ongoing condition?	Approved (fee cap)	Approved
Condition C3	The provider must: i. Have in force and publish a student protection plan which has been approved by the OfS as appropriate for its assessment of the regulatory risk presented by the provider and for the risk to continuation of study of all of its students. ii. Take all reasonable steps to implement the provisions of the plan if the events set out in the plan take place. iii. Inform the OfS of events, except for the closure of an individual course, that require the implementation of the provisions of the plan.	Initial and ongoing	✓	✓
Condition C4	The provider must comply with any Student Protection Direction in circumstances where the OfS reasonably considers that there is a material risk that the provider will, or will be required by the operation of law to, fully or substantially cease the provision of higher education in England ('Market Exit Risk'). This condition does not apply to Further Education Bodies (as defined in section 4 of the Technical and Further Education Act 2017).	Ongoing	✓	✓

General ongoing conditions of registration		Initial or ongoing condition?	Approved (fee cap)	Approved
D: Financial sustainability				
Condition D	The provider must: i. Be financially viable. ii. Be financially sustainable. iii. Have the necessary financial resources to provide and fully deliver the higher education courses as it has advertised and as it has contracted to deliver them. iv. Have the necessary financial resources to continue to comply with all conditions of its registration.	Initial and ongoing	✓	✓
E: Good governance				
Condition E1	The provider's governing documents must uphold the public interest governance principles that are applicable to the provider.	Initial and ongoing	✓	✓
Condition E2	The provider must have in place adequate and effective management and governance arrangements to: i. Operate in accordance with its governing documents. ii. Deliver, in practice, the public interest governance principles that are applicable to it. iii. Provide and fully deliver the higher education courses advertised. iv. Continue to comply with all conditions of its registration.	Initial and ongoing	✓	✓

General ongoing conditions of registration		Initial or ongoing condition?	Approved (fee cap)	Approved
Condition E3	The governing body of a provider must: i. Accept responsibility for the interactions between the provider and the OfS and its designated bodies. ii. Ensure the provider's compliance with all of its conditions of registration and with the OfS's accounts direction. iii. Nominate to the OfS a senior officer as the 'accountable officer' who has the responsibilities set out by the OfS for an accountable officer from time to time.	Ongoing	✓	✓
Condition E4	The governing body of the provider must notify the OfS of any change of which it becomes aware which affects the accuracy of the information contained in the provider's entry in the Register.	Ongoing	✓	✓
Condition E5	The provider must comply with guidance published by the OfS to facilitate, in co-operation with electoral registration officers, the electoral registration of students.	Ongoing	✓	✓
F: Information for students				
Condition F1	The provider must provide to the OfS, and publish, in the manner and form specified by the OfS, the transparency information set out in section 9 of HERA.	Ongoing	✓	✓
Condition F2	The provider must provide to the OfS, and publish, information about its arrangements for a student to transfer.	Ongoing	✓	✓

General ongoing conditions of registration		Initial or ongoing condition?	Approved (fee cap)	Approved
Condition F3	For the purpose of assisting the OfS in performing any function, or exercising any power, conferred on the OfS under any legislation, the governing body of a provider must: i. Provide the OfS, or a person nominated by the OfS, with such information as the OfS specifies at the time and in the manner and form specified. ii. Permit the OfS to verify, or arrange for the independent verification by a person nominated by the OfS of such information as the OfS specifies at the time and in the manner specified and must notify the OfS of the outcome of any independent verification at the time and in	Ongoing	✓	✓
	iii. Take such steps as the OfS reasonably requests to co-operate with any monitoring or investigation by the OfS, in particular, but not limited to, providing explanations or making available documents to the OfS or a person nominated by it or making available members of staff to meet with the OfS or a person nominated by it. The requirements in paragraphs (ii) and (iii) do not affect the generality of the requirement in paragraph (i).			

General ongoing conditions of registration		Initial or ongoing condition?	Approved (fee cap)	Approved
Condition F4	For the purposes of the designated data body (DDB)'s duties under sections 64(1) and 65(1) of HERA, the provider must provide the DDB with such information as the DDB specifies at the time and in the manner and form specified by the DDB.	Ongoing	✓	✓
G: Accountability for fees and funding				
Condition G1	A provider in the Approved (fee cap) category must charge qualifying persons on qualifying courses fees that do not exceed the relevant fee limit determined by the provider's quality rating and its access and participation plan.	Ongoing	✓	
Condition G2	The provider must comply with any terms and conditions attached to financial support received from the OfS and UK Research and Innovation (UKRI) under sections 41(1) and/or 94(2) of HERA. A breach of such terms and conditions will be a breach of this condition of registration.	Ongoing	✓	✓[24]
Condition G3	The provider must pay: i. Its annual registration fee and other OfS fees in accordance with regulations made by the Secretary of State. ii. The fees charged by the designated bodies.	Ongoing	✓	✓

[24] This condition is applicable to providers in receipt of financial support from either the OfS or from UKRI.

Annex B: Public interest governance principles

The public interest governance principles applicable to all registered providers:

I. **Academic freedom**: Academic staff at an English higher education provider have freedom within the law:

- to question and test received wisdom; and
- to put forward new ideas and controversial or unpopular opinions

without placing themselves in jeopardy of losing their jobs or privileges they may have at the provider.

II. **Accountability:** The provider operates openly, honestly, accountably and with integrity and demonstrates the values appropriate to be recognised as an English higher education provider.

III. **Student engagement:** The governing body ensures that all students have opportunities to engage with the governance of the provider, and that this allows for a range of perspectives to have influence.

IV. **Academic governance:** The governing body receives and tests assurance that academic governance is adequate and effective through explicit protocols with the senate/academic board (or equivalent).

V. **Risk management:** The provider operates comprehensive corporate risk management and control arrangements (including for academic risk) to ensure the sustainability of the provider's operations, and its ability to continue to comply with all of its conditions of registration.

VI. **Value for money:** The governing body ensures that there are adequate and effective arrangements in place to provide transparency about value for money for all students and (where a provider has access to the student support system or to grant funding) for taxpayers.

VII. **Freedom of speech:** The governing body takes such steps as are reasonably practicable to ensure that freedom of speech within the law is secured within the provider.

VIII. **Governing body:** The size, composition, diversity, skills mix, and terms of office of the governing body is appropriate for the nature, scale and complexity of the provider.

IX. **Fit and proper:** Members of the governing body, those with senior management responsibilities, and individuals exercising control or significant influence over the provider, are fit and proper persons.

Additional public interest governance principles applicable to providers authorised with DAPs:

X. **Records:** Where degree awarding powers are solely contained in the provider's governing documents, and no order either under section 76 of the Further and Higher Education Act 1992, or under HERA exists, the provisions setting out those powers must be retained and may not be altered without the consent of the OfS.[25]

Additional public interest governance principles applicable to providers in receipt of financial support from the OfS or from UKRI:

XI. **Independent members of the governing body:** There must be at least one external member of the governing body who is independent of the provider, and whose term of office is normally limited to a maximum of three terms of three years or two terms of four years. For providers with large governing bodies, or more complex legal forms, additional independent members may be appropriate.

XII. **Regularity, propriety and value for money:** The governing body ensures that there are adequate and effective arrangements in place to ensure public funds are managed appropriately, in line with the conditions of grant and the principles of regularity, propriety and value for money, and to protect the interests of taxpayers and other stakeholders. This also applies to any funds passed to another entity for the provision of facilities or learning and teaching, or for research to be undertaken.

Notes

Fit and proper persons

A fit and proper person

- is of good character
- has the qualifications, competence, skills and experience that are necessary for their role;
- is able by reason of their health, after reasonable adjustments are made, to properly perform the tasks of the office or position for which they are appointed
- has not been responsible for, been privy to, contributed to, or facilitated any serious misconduct or mismanagement (whether unlawful or not) in their employment or in the conduct of any entity with which they are or have been associated.

The following are indicators that a person may not be a fit and proper person:

- disqualification from acting as a company director, or from acting as a charity trustee, as set out in the Company Directors Disqualification Act 1986 or the Charities Act 2011

[25] This principle ensures that appropriate records are kept regarding degree awarding powers, where no order exists. This is primarily applicable to providers that obtained their powers before 1992, and/or that are incorporated via Royal Charter or a Private Act.

- conviction of a criminal offence anywhere in the world[26]
- subject of any adverse finding in civil proceedings, where relevant, including, but not limited to bankruptcy or equivalent proceedings (in the last three years)
- subject of any adverse findings in any disciplinary proceedings by any regulatory authorities or professional bodies
- involvement in any abuse of the tax systems
- involvement with any entity that has been refused registration to carry out a trade or has had that registration terminated
- involvement in a business that has gone into insolvency, liquidation or administration while the person has been connected with that organisation or within one year of that connection;
- dismissal from a position of trust or similar
- involvement with a higher education provider that has had its registration refused or revoked by the OfS or has had similar action taken against it by another regulator (this includes, but is not limited to, serving on a board/governing body, having voting rights, being a significant shareholder/owner, serving in a senior position, etc.).

Regularity, propriety and value for money

For these purposes, the OfS takes regularity, propriety and value for money to mean:

- **Regularity**: compliance with the relevant legislation (including State Aid legislation) and funds used only for the purpose for which they are given, and in compliance with any terms and conditions attached.
- **Propriety**: meeting high standards of public conduct, including the relevant Parliamentary expectations, especially transparency.
- **Value for money**: meeting the need for efficiency, economy, effectiveness and prudence in the administration of public resources, to secure value for public money in relation to the public grant funding received.

[26] Based on reasonable enquiries by the provider in which individuals are asked to disclose all relevant matters that occurred in the UK and/or in a foreign jurisdiction. The OfS would not expect individuals to disclose matters that are 'spent' under the Rehabilitation of Offenders Act 1974, but they may do so if they wish. Particular consideration will be given to offences of dishonesty, fraud, financial crime or an offence under legislation relating to higher education, further education and charities, whether or not in the UK.

Annex C: Guidance on the criteria for the authorisation for DAPs

Overarching criterion for the authorisation for DAPs

The overarching criterion for the authorisation for DAPs is:

For New DAPs	An **emerging** self-critical, cohesive academic community with a **clear commitment** to the assurance of standards supported by effective **(in prospect)** quality systems
For Full DAPs	A self-critical, cohesive academic community with a proven commitment to the assurance of standards supported by effective quality systems

The underpinning criteria for the different types of DAPs authorisation are set out below. These provide a framework to accommodate subject specific and level specific DAPs, without the need for separate sets of criteria. Differentiation for the different types of powers will be achieved through a tailored scrutiny process in which both the provider's submission of evidence and the scrutiny itself are focussed on the subject(s) or qualification level(s) for which powers are being sought. Some criteria and evidence requirements, for example those relating to academic governance, will apply in the same way regardless of the type of powers applied for. For other criteria focussing on staff expertise and learning resources, a provider will only need to demonstrate competence in the relevant subject(s) and level(s).

Underpinning criteria for taught DAPs

A: Academic governance

Criterion A1: Academic governance

A1.1 An organisation granted degree awarding powers has effective academic governance, with clear and appropriate lines of accountability for its academic responsibilities.

A1.2 Academic governance, including all aspects of the control and oversight of its higher education provision, is conducted in partnership with its students.

A1.3 Where an organisation granted degree awarding powers works with other organisations to deliver learning opportunities, it ensures that its governance and management of such opportunities is robust and effective and that decisions to work with other organisations are the result of a strategic approach rather than opportunism.

Explanation

There must be sound academic governance and management structures with integrity in all respects, so that there can be full public confidence in the integrity of the provider's qualifications. There should be appropriate safeguards to ensure that if the organisation decides to work with other organisations, these arrangements do not jeopardise academic standards or the quality of programmes. Such arrangements remain the ultimate responsibility of the organisation with degree awarding powers which must ensure that its oversight is effective for all its provision.

Seeking to engage students as partners is an important part of the academic governance and management of academic standards and quality, as is effective oversight of the information which the organisation produces about its provision for all its stakeholders, especially prospective, current and completed students.

Evidence requirement

To assist in demonstrating that criterion A1 is met, the applicant organisation will be required to provide evidence that:

a. Its higher education mission and strategic direction and associated policies are coherent, published, understood and applied consistently.

b. Its academic policies support its higher education mission, aims and objectives.

c. There is clarity and differentiation of function and responsibility at all levels in the organisation in relation to its academic governance structures and arrangements for managing its higher education provision.

d. The function and responsibility of the senior academic authority is clearly articulated and consistently applied.

e. There is appropriate depth and strength of academic leadership.

f. It develops, implements and communicates its policies and procedures in collaboration with its staff and students and external stakeholders.

g. It will manage successfully the responsibilities that would be vested in it were it to be granted degree awarding powers.

h. Students individually and collectively are engaged in the governance and management of the organisation and its higher education provision, with students supported, to be able to engage effectively.

i. Where the organisation works with, or proposes to work with, other organisations to deliver learning opportunities, the arrangements are based on a strategic approach, informed by the effective assessment of risk including the carrying out of due diligence. They are defined in a written legal agreement and are subject to the same robust oversight and governance as the rest of the organisation's provision.

B: Academic Standards and Quality Assurance

Criterion B1 – Regulatory frameworks

B1.1 An organisation granted degree awarding powers has in place transparent and comprehensive academic frameworks and regulations to govern how it awards academic credit and qualifications.

B1.2 A degree awarding organisation maintains a definitive record of each programme and qualification that it approves (and of subsequent changes to it) which constitutes the reference point for delivery and assessment of the programme, its monitoring and review, and for the provision of records of study to students and alumni.

Explanation

The security of the academic standards of qualifications depends in large measure on the academic frameworks and regulations which govern their award. These can be expected to cover a wide variety of topics ranging from the approval of degree schemes, the use or not of credit, through to the conduct of student assessments and appeals against academic decisions.

Organisations that award degrees are required to have in place a comprehensive set of regulations covering these matters. These academic frameworks and regulations are approved by the organisation's senior academic authority.

Evidence requirement

To assist in demonstrating that Criterion B1 is met, the applicant organisation will be required to provide evidence that:

a. The academic frameworks and regulations governing its higher education provision (covering, for example, student admissions, assessment, progression, award, appeals and complaints) are appropriate to its current status and are implemented fully and consistently.

b. It has created, in readiness, one or more academic frameworks and regulations which will be appropriate for the granting of its own higher education qualifications.

c. Definitive and up-to-date records of each qualification to be awarded and each programme being offered by the organisation are being maintained. These records are used as the basis for the delivery and assessment of each programme and there is evidence that students and alumni are provided with records of study.

Criterion B2 – Academic standards

B2.1 An organisation granted degree awarding powers has clear and consistently applied mechanisms for setting and maintaining the academic standards of its higher education qualifications.

B2.2 Organisations with degree awarding powers are expected to demonstrate that they are able to design and deliver courses and qualifications that meet the threshold academic standards described in the Framework for Higher Education Qualifications (FHEQ). Organisations with degree awarding powers are expected to demonstrate that the standards that they set and maintain above the threshold are reliable over time and reasonably comparable to those set and achieved by other UK degree awarding bodies.

Evidence requirement

To assist in demonstrating that criterion B2 is met, the applicant organisation will be required to provide evidence that:

a. Its higher education qualifications are offered at levels that correspond to the relevant levels of The Frameworks for Higher Education Qualifications of UK Degree Awarding Bodies.

b. The setting and maintaining of academic standards takes appropriate account of relevant external points of reference and external and independent points of expertise, including students.

c. Its programme approval arrangements are robust, applied consistently, and ensure that

academic standards are set at a level which meets the UK threshold standard for the qualification and are in accordance with their own academic frameworks and regulations.

d. Credit and qualifications will be awarded only where the achievement of relevant learning outcomes (module learning outcomes in the case of credit and programme outcomes in the case of qualifications) has been demonstrated through assessment, and both the UK threshold standards and the academic standards of the relevant degree awarding body have been satisfied.

e. Its programme approval, monitoring and review arrangements are robust, applied consistently and explicitly address whether the UK threshold academic standards are achieved and whether the academic standards required by the individual degree awarding body are being maintained.

f. In establishing, and then maintaining, threshold academic standards and comparability of standards with other providers of equivalent level qualifications, it makes use of appropriate external and independent expertise.

Criterion B3 – Quality of the academic experience

B3.1 Organisations with degree awarding powers are expected to demonstrate that they are able to design and deliver courses and qualifications that provide a high quality academic experience to all students from all backgrounds, irrespective of their location, mode of study, academic subject, protected characteristics, previous educational background or nationality. Learning opportunities are consistently and rigorously quality assured.

Explanation

Organisations offering higher education awards are expected to consider carefully the purposes and objectives of the programmes they are offering. They are also expected to design their curricula, learning and teaching activities and associated resources, and assessment and feedback, in a way that will give diligent students the best chance of achieving their purposes and objectives and the threshold academic standards for the qualification being sought. Organisations offering higher education qualifications must have the means of establishing for themselves that their intentions are, in practice, being met.

Evidence requirement

To assist in demonstrating that Criterion B3 is met the applicant organisation will be required to provide evidence that:

Design and approval of programmes

a. The organisation operates effective processes for the design, development and approval of programmes.

b. Relevant staff are informed of, and provided with guidance and support on, these procedures and their roles and responsibilities in relation to them.

c. Responsibility for approving new programme proposals is clearly assigned, including the involvement of external expertise, where appropriate, and subsequent action is carefully monitored.

d. Coherence of programmes with multiple elements or alternative pathways is secured and maintained.

e. Close links are maintained between learning support services and the organisation's programme planning and approval arrangements.

Learning and teaching

a. The organisation articulates and implements a strategic approach to learning and teaching which is consistent with its stated academic objectives.

b. The organisation maintains physical, virtual and social learning environments that are safe, accessible and reliable for every student, promoting dignity, courtesy and respect in their use.

c. Robust arrangements exist for ensuring that the learning opportunities provided to those of its students that may be studying at a distance from the organisation are effective.

d. Every student is enabled to monitor their progress and further their academic development.

Assessment

a. The organisation operates valid and reliable processes of assessment, including for the recognition of prior learning, which enable every student to demonstrate the extent to which they have achieved the intended learning outcomes for the credit or qualification being sought.

b. Staff and students engage in dialogue to promote a shared understanding of the basis on which academic judgements are made.

c. Students are provided with opportunities to develop an understanding of, and the necessary skills to demonstrate, good academic practice.

d. The organisation operates processes for preventing, identifying, investigating and responding to unacceptable academic practice.

e. Processes for marking assessments and for moderating marks are clearly articulated and consistently operated by those involved in the assessment process.

External examining

a. The organisation makes scrupulous use of external examiners including in the moderation of assessment tasks and student assessed work.

b. The organisation gives full and serious consideration to the comments and recommendations contained in external examiners' reports and provides external examiners with a considered and timely response to their comments and recommendations.

Academic appeals and student complaints

a. The organisation has effective procedures for handling academic appeals and student complaints about the quality of the academic experience; these procedures are fair, accessible and timely, and enable enhancement;

b. Appropriate action is taken following an appeal or complaint.

C: Scholarship and the pedagogical effectiveness of staff

Criterion C1 – the role of academic and professional staff

C1.1 An organisation granted powers to award degrees assures itself that it has appropriate numbers of staff to teach its students. Everyone involved in teaching or supporting student learning, and in the assessment of student work, is appropriately qualified, supported and developed to the level(s) and subject(s) of the qualifications being awarded.

Explanation

The capacity and competence of the staff who teach and who facilitate and assess learning are central to the value of the education offered to students. Organisations awarding their own qualifications have a crucial responsibility to ensure that every student has the chance to develop as an independent learner, and the opportunity to demonstrate the extent to which they have achieved the intended learning outcomes for the credit or qualification being sought.

Chances are maximised by effective teaching and the facilitation of learning undertaken by staff with academic, professional and vocational expertise in line with the organisation's curriculum offer. This includes a responsibility for ensuring that staff maintain a professional understanding of current developments in research and scholarship in their subject and, where applicable, keep in touch with practice in their professions and for ensuring that structured opportunities for them to do so are both readily available and widely taken up. It also means that teaching for degree-level qualifications should reflect, in a careful, conscious and intellectually demanding manner, the latest developments in the subject of study. Organisations also have a responsibility for making certain that the assessment of their students is carried out in a professional, rigorous and consistent way.

Evidence requirement

To assist in demonstrating that criterion C1 is met, the applicant organisation will be required to provide evidence that all staff involved in teaching or supporting student learning, and in the assessment of student work have:

a. Relevant learning, teaching and assessment practices that are informed by reflection, evaluation of professional practice, and subject-specific and educational scholarship.

b. Academic and (where applicable) professional expertise.

c. Active engagement with the pedagogic development of their discipline knowledge.

d. Understanding of current research and advanced scholarship in their discipline and that such knowledge and understanding directly inform and enhance their teaching. Also active engagement with research and/or advanced scholarship to a level commensurate with the level and subject of the qualifications being offered.

e. Opportunities to engage in reflection and evaluation of their learning, teaching and assessment practice.

f. Development opportunities aimed at enabling them to enhance their practice and scholarship.

g. Opportunities to gain experience in curriculum development and assessment design and to engage with the activities of other higher education providers for example through becoming external examiners, validation panel members or external reviewers.

h. Expertise in providing feedback on assessment which is timely, constructive and developmental.

i. Experience of curriculum development and assessment design.

j. Engagement with the activities of providers of higher education in other organisations (through, for example, involvement as external examiners, validation panel members, or external reviewers).

In addition, the applicant organisation will be required to provide evidence that:

a. It has made a rigorous assessment of the skills/expertise required to teach all students and the appropriate staff/student ratios.

b. It has appropriate staff recruitment practices.

D: Environment for supporting students

Criterion D1 – Enabling student development and achievement

D1.1 Higher education providers have in place, monitor and evaluate arrangements and resources which enable students to develop their academic, personal and professional potential.

Explanation

The teaching and learning infrastructure – all the facilities, digital resources and support activities that are provided to maximise students' chances of developing their potential and of obtaining the qualification they are seeking – is a means to an end. Organisations that award their own qualifications are expected to have mechanisms in place designed to support and develop students beyond the arrangements for learning, teaching and assessment addressed in criterion B3. These include the specialist support services such as counselling, disability and careers advice and cover both the generic provision of services to a cohort of students and the targeted support for individual students. It is part of an organisation's strategic approach which embodies the integration, coherence and internal cooperation between different areas of a provider, including for example links between professional services, academic departments and student representative bodies as well as with external organisations.

Evidence requirement

To assist in demonstrating that criterion D1 is met, the applicant organisation will be required to provide evidence that:

a. The organisation takes a comprehensive strategic and operational approach to determine and evaluate how it enables student development and achievement for its diverse body of students.

b. Students are advised about, and inducted into, their study programmes in an effective way and account is taken of different students' choices and needs.

c. The effectiveness of student and staff advisory, support and counselling services is monitored and any resource needs arising are considered.

d. Its administrative support systems enable it to monitor student progression and performance accurately and provide timely, secure and accurate information to satisfy academic and non-academic management information needs.

e. The organisation provides opportunities for all students to develop skills that enable their academic, personal and professional progression, for example academic, employment and future career management skills.

f. The organisation provides opportunities for all students to develop skills to make effective use of the learning resources provided, including the safe and effective use of specialist facilities, and the use of digital and virtual environments.

g. The organisation's approach is guided by a commitment to equity.

E: Evaluation of performance

Criterion E1 – An organisation granted degree awarding powers takes effective action to assess its own performance, respond to identified weaknesses and develop further its strengths.

Explanation

An organisation that has powers to award its own qualifications must have in place the means of critically reviewing its own performance, in particular in relation to standards and student outcomes. It needs to know how it is doing in comparison with other similar organisations, and have in place robust mechanisms for disseminating good practice. It must also be able to identify limitations or deficiencies in its own activities and take timely and effective remedial action when this is called for.

Evidence requirement

To assist in demonstrating that Criterion E is met the applicant organisation will be required to provide evidence that:

a. Critical self-assessment is integral to the operation of its higher education provision and that action is taken in response to matters raised through internal or external monitoring and review.

b. Clear mechanisms exist for assigning and discharging action in relation to the scrutiny and monitoring of its academic provision.

c. Ideas and expertise from within and outside the organisation (for example on programme design and development, on teaching, and on student learning and assessment) are drawn into its arrangements for programme design, approval, delivery and review.

Underpinning criteria for research DAPs

Where a provider has applied for research DAPs and either already holds Taught Degree Awarding Powers (TDAPs), or is seeking TDAPs at the same time, the following criteria will apply in addition to those set out above for taught awards.

Criterion F – Academic staff

F1 The organisation's supervision of its research students, and the teaching it undertakes at doctoral level, is underpinned by academic staff with high levels of knowledge, understanding and experience of current research and advanced scholarship in their subjects of study.

Explanation

The creation and interpretation of knowledge which extends a discipline, usually through original research, is a defining characteristic of the UK doctorate, and the award of research degrees places a particular and substantial responsibility on an awarding body. Accordingly, the organisation's academic staff should command the respect and confidence of their academic peers across the UK and international higher education sector, and be considered credible to deliver research degree programmes. Organisations wishing to offer research degrees should have a strong underpinning culture in place that actively encourages and supports creative, high quality research and scholarship among its academic staff, and its doctoral and other research students. Such a culture typically involves engagement with a range of discipline-based, professional practitioner and research-active communities, and this ensures that research students should only be accepted into an environment that provides support for doing and learning about research, and where excellent research, recognised by the relevant subject community, is occurring.

Academic staff involved in the delivery of research degrees are expected to have knowledge, understanding and experience of research and advanced scholarship that go well beyond expectations for staff engaged in the delivery of taught degrees. Strength and depth in research supervision capacity, research performance in authoritative external peer reviews, and demonstrable involvement in research-related activities with other higher education providers or comparable organisations engaged in research, are all factors to be taken into account in any consideration of the merits of an application for research degree-awarding powers.

Evidence requirement

To assist in meeting criterion F1, the applicant organisation will be required to provide evidence that:

a. Its policies and procedures relating to research, advanced scholarship, and research degree programmes are appropriate, effective and reflect sector best practice, and are understood and applied consistently, both by those involved in the delivery of research degrees and, where appropriate, by the students involved.

b. It has a strong and sustainable research culture, which directly informs and enhances the supervision and teaching of research degree students.

c. It has a critical mass of research staff and students, representing a viable and sustainable research community.

d. It actively engages in discipline-based and broader based communities of researchers and scholars external to the organisation, and takes steps to engage the public at large with the research it undertakes.

e. It has established productive research-relevant links, formal or informal, with other higher education and specialist research institutions through, for example, joint research activities.

f. It has a critical mass of research leaders, normally at professorial level, whose role is to support the development of research and an effective research culture.

g. Staff involved in the delivery of research degree programmes, in a teaching and/or supervisory capacity:

    i. Are themselves active researchers who produce externally recognised outputs in research and advanced scholarship.

    ii. Are examiners of research degrees, appointed as internal examiners by the awarding institution or as external examiners elsewhere.

    iii. Command the respect and confidence of academic peers across the sector as reflected, for example, in Research Excellence Framework (REF) outcomes, other authoritative external reviews, awards of distinction, through research contracts and/or funding, as invited/keynote speakers at national and international research events and conferences, as members of national and international research committees or bodies.

    iv. Have current knowledge of developments within the higher education sector relating to research and research degrees.

    v. Have access to a systematic and effective approach to staff development and appraisal that enables them to develop and enhance their knowledge of current research and advanced scholarship.

The applicant organisation will also be required to provide an analysis of, and supporting commentary relating to, the data it has used to satisfy itself that the staff involved with the delivery of its research degree programmes have met the metric requirements outlined below. Data should be provided for the three years immediately preceding the submission of an application for research degree awarding powers. Applicant organisations should be aware that numeric criteria contribute to a broader assessment of their capacity to assume the ‘particular and substantial responsibility’ (criterion F1, explanation above) placed on organisations holding research degree awarding powers and necessarily involves an evaluative dimension.

The applicant organisation will be required to provide evidence that:

a. A significant proportion (normally around a half as a minimum) of its academic staff are active and recognised contributors to at least one organisation such as a subject association, learned society or relevant professional body. Such contributions are expected to involve some form of public output or outcome, broadly defined, demonstrating the

research-related impact of academic staff on their discipline or sphere of research activity at a regional, national or international level;

b. A significant proportion (normally around a third as a minimum) of its academic staff have recent (i.e. within the past three years) personal experience of research activity in other UK or international higher education or specialist research institutions by, for example, acting as external examiners for research degrees, serving as panel members for the validation or review of research degree programmes, or contributing to collaborative research projects with other organisations (other than as a doctoral student). An applicant organisation will be required to demonstrate both that such activity has taken place, and that in the case of collaborative research activity, the member of staff has made a personal contribution to the research and that a tangible output has been or is in the process of being achieved.

c. A significant proportion (normally around a third as a minimum) of its academic staff can demonstrate recent achievements (i.e. within the past three years) that are recognised by the wider academic community to be of national and/or international standing (e.g. as indicated by authoritative external peer reviews). It is expected that the evidence will largely relate to work undertaken within the applicant organisation rather than in other HEIs.

Criterion G – National guidance

G1 The organisation satisfies relevant national guidance relating to the award of research degrees.

Evidence requirement

To assist in meeting criterion G1, the applicant organisation will be required to demonstrate that it meets fully and will continue to meet, the expectations of:

a. The Qualifications Frameworks in relation to the levels of its research degree programmes.

b. Research degree management frameworks issued by relevant research councils, funding bodies and professional/statutory bodies, which might include Conditions of Research Council Training Grants issued by Research Councils UK and Statement of Expectations for Postgraduate Training issued by Research Councils UK and other training funders.

Criterion H – Minimum number of doctoral degree conferrals

H1 The applicant organisation has achieved more than 30 doctoral degree conferrals,[27] awarded through partnerships with UK awarding bodies.

H2 In addition, the applicant organisation will need to demonstrate that:

a. The majority of conferred doctoral degrees have been achieved by students who are not also academic staff of the organisation.

b. Its completion rates meet sector norms.

[27] Includes professional doctorates.

Glossary

Accelerated degree

A qualification at level 6 of the **Framework for Higher Education Qualifications** where the number of academic years to be completed is at least one fewer than would normally be the case for that course. A variety of terms is in use for degree qualifications which appear to be accelerated, including ‘fast-track’, ‘two-year’, ‘compressed’, ‘time-compressed’, ‘condensed’ and ‘intensive’.

Access and participation plan

A plan produced by a provider in the **Approved (fee cap)** category of the Register. The plan sets out how the provider will sustain or improve access to its provision for students from disadvantaged and underrepresented groups in higher education, and promote success for those students including retention, attainment and employability. Plans must be approved by the **Director for Fair Access and Participation.**

Access and participation statement

A statement published by a provider in the **Approved** category of the Register that sets out the provider’s commitment to access and participation in higher education.

Alternative provider(s) (APs)

A provider of higher education courses which does not receive direct annual public funding from OfS or higher education funding bodies in the devolved administrations and is not a further education college.

Approved

Registration category for providers that wish their students to be able to access the student support system and do not want to be eligible for OfS grant funding and/or to have fee cap obligations.

Approved (fee cap)

Registration category for providers that want to be eligible for OfS grant funding in return for a fee cap and, where charging the higher fee amount, an **access and participation plan**.

Baseline requirements (and relationship with conditions)

Expressed in **conditions** of registration that seek to deliver the OfS’s four primary regulatory objectives, as set out in Part I. Except where they refer to access and participation, they are expressed as outcomes, setting out the minimum level a provider must achieve and demonstrate in order to be registered. With the exception of any condition that expressly provides that it only has effect as an initial condition. all are **general ongoing conditions of registration**, some are also **initial conditions of registration** which must be satisfied during application to the register.

Competition and Markets Authority (CMA)

The CMA is responsible for promoting competition for the benefit of consumers. Its aim is to make markets, including higher education, work well for consumers, businesses and the economy.

Conditions (ongoing, initial, specific)

'Conditions' and 'conditions of registration' are general terms used to mean all types of condition that a provider must satisfy in order to be registered. They include:

- initial conditions of registration, which a provider must satisfy as part of its application to join the Register
- general ongoing conditions of registration, which a provider must satisfy after it has joined the Register in order to maintain its registered status
- specific conditions of registration, which are additional conditions imposed by the OfS on a particular provider to mitigate or manage specific risks or weaknesses that it has identified.

Data

Facts and figures, both quantitative and qualitative, which can be collected, processed and analysed in order to generate additional information. References to **information** can be taken to include **data** as one source of information.

Degree awarding powers (DAPs)

In England degrees must be awarded by a body with degree awarding powers (DAPs). There are three types of degree awarding powers:

- Foundation degree awarding powers
- Taught degree awarding powers
- Research degree awarding powers.

Delivery provider

In the context of a **subcontractual** arrangement, the provider that delivers higher education provision to students on behalf of another higher education provider (the **lead provider**). The lead provider remains responsible for the students (subject to the effect of any condition of registration).

Deregistration

Removal from the OfS's Register.

Designated data body (DDB)

A body that performs the duties set out in sections 64 and 65 of HERA, including data collection, data processing, data storage, data publication and provision. The DDB is designated by the Secretary of State following consultation and a recommendation from the OfS.

Designated quality body (DQB)

A body that carries out the functions set out in sections 23 and 46 of HERA. The DQB is designated by the Secretary of State following consultation and a recommendation from the OfS.

Director for Fair Access and Participation (DFAP)

The Director for Fair Access and Participation's role is to ensure that higher education providers are doing all they can to support underrepresented groups, from widening access, to monitoring retention, attainment and progression from higher education. The DFAP is a member of the OfS board.

Efficiency studies

Efficiency studies are intended to improve the economy, efficiency and effectiveness in the management of a registered provider. Their findings may also inform the OfS's assessment of risk for that provider. They are intended to ensure that providers are delivering value for money for students and taxpayers, recognising the very significant investment both of these groups make in higher education.

Electoral registration of students

Entering students on a register of electors maintained by an electoral registration officer in England (as appointed under section 8(2) of the Representation of the People Act 1983).

Embedded college

A provider, usually part of a network, operating within or near to the main premises of an HE provider, in partnership or as part of a joint venture, usually delivering pathway courses which prepare students for entry to higher education programmes at that HE provider, or integrated higher education programmes which students complete at that HE provider.

Enhanced monitoring

Additional data/information required by the OfS from a provider, or an investigation of specific concerns where a provider is at risk of breaching one or more ongoing condition of registration.

Entry and search

The OfS may, in exceptional circumstances, use its powers of entry and search to investigate suspected serious breaches of a provider's ongoing **conditions** of registration, relating to its OfS funding or **student support** funding.

Equality of opportunity

Equality of opportunity for students from all backgrounds to benefit from access to and participation in the higher education provided by English higher education providers.

Exempt charity

A higher education institution established in England with charitable purposes which is exempt from registration with the Charity Commission for England and Wales and subject to oversight by a principal regulator on behalf of the Charity Commission.

Exit the market, see Market exit

Fee limit

An upper limit on the tuition fees which a provider in the **Approved (fee cap)** category of the Register may charge, as prescribed in regulations.

Fit and proper person

A fit and proper person: (a) is of good character, (b) has the qualifications, competence, skills and experience which are necessary for their role (c) is able by reason of their health, after reasonable adjustments are made, to perform properly the tasks of the office or position for which they are appointed and (d) has not been responsible for, been privy to, contributed to or facilitated any serious misconduct or mismanagement (whether unlawful or not) in their employment or in the conduct of any entity with which they are of have been associated.

Framework of Higher Education Qualifications (FHEQ)

Sets out the levels of higher education qualifications, and is illustrated by typical qualifications for that level, for example Higher National Certificates, graduate diplomas, bachelor degrees. Each level includes a descriptor that sets out the generic outcomes and attributes expected for the award of qualifications at that level.

Franchising, see Subcontractual arrangement

General ongoing conditions of registration, see Ongoing conditions of registration

Governing body

Persons responsible for the management of the provider. As defined in section 85 of HERA, this will be any board of governors of the institution or any equivalent controlling body, for example the board of a company, the trustees of a charity, etc.

Governing documents

Documents adopted, or that should have been adopted, by the provider that describe any of the provider's objectives or values, its powers, who has a role in decision making within the provider, how the provider takes decisions about how to exercise its functions or how it monitors their exercise. This test will be broadly rather than narrowly applied. Where a document in part deals with any such matters, and in part with other matters, the whole of the document is a 'governing document'.

Higher education

As defined in Schedule 6 of the Education Reform Act 1988.

Higher education provider

An organisation that delivers higher education, as defined in Schedule 6 of the Education Reform Act 1988. A provider can be a body with **degree awarding powers** or deliver higher education on behalf of another awarding body. Unless stated otherwise, in this document 'provider' or 'higher education provider' refers to a registered higher education provider, as defined in section 83 in HERA.

Information

Includes **data**, along with additional intelligence, evidence and knowledge.

Initial conditions of registration

The conditions a provider must satisfy as part of its application to join the Register. For more information, see **conditions of registration**.

Intervention

Action by the OfS (including the possibility of imposing sanctions) to address either a breach of conditions of registration by a provider, or an increased risk of a provider breaching its conditions.

Lead indicators

Indicators constructed from data and information flows, in as near real time as possible, that allow the OfS to anticipate future events.

Lead provider

In the context of a **subcontractual** arrangement, the lead provider allows another provider, the **delivery provider** to deliver all, or part, of a programme that is designed, approved and owned by the lead provider. The lead provider retains overall control of the programme's content, delivery, assessment and quality assurance arrangements.

Market entry

A provider starting to deliver higher education and seeking registration with the OfS**.**

Market exit

A provider ceasing to deliver higher education courses. A provider might exit the market deliberately (for example, for strategic reasons) or for other reasons (for example, because of a loss of registration, or financial failure).

Monetary penalties

The OfS may decide to impose a monetary penalty where a provider has breached one or more ongoing conditions or registration.

New provider

A provider that at the point of applying to join the OfS's Register has not previously been regulated

by HEFCE or DfE.

Office of the Independent Adjudicator (OIA)

The OIA's role is to review individual and group complaints by students against higher education providers, after internal processes have been exhausted, and to promote good practice in handling complaints and appeals.

Ongoing conditions of registration

Conditions of registration that a provider must meet after it has joined the Register in order to maintain its registered status. For more information, see **conditions of registration**

Powers of Entry and Search see Entry and Search
Principal regulator

A higher education institution established in England with charitable purposes which is exempt from registration with by the Charity Commission for England and Wales is subject to oversight by a principal regulator on behalf of the Charity Commission. The OfS undertakes this duty to promote compliance with charity law by these providers.

Provider

Unless the context otherwise requires, an English higher education provider as defined in section 83 of HERA. A provider can be a body with **degree awarding powers** or deliver higher education on behalf of another awarding body.

Public interest governance principles

Section 14(2) of HERA makes provision for the OfS to determine and publish a list of principles applicable to the governance of English higher education providers.

Quality assessment

A collective term used to refer to arrangements for ensuring higher education providers meet baseline expectations for academic quality and standards.

Regulatory risk

The risk of the registered provider failing to comply with regulation by the OfS.

Reportable event

An event that requires a provider to notify OfS of material decisions/changes, such as a change in control or borrowing above a certain level.

Risk monitoring

The process by which the OfS will identify an increased risk that a provider will breach one or more of its conditions of registration and, if necessary, respond to it, in a proportionate manner. It will take two forms: (a) general monitoring, applied to all providers; and (b) enhanced

monitoring/engagement for individual providers where an increased risk has been identified or where there is a suspected/actual breach of conditions.

Sanction

The OfS may impose a monetary penalty on, or suspend or deregister, a registered higher education provider where it appears that there is or has been a breach of a provider's ongoing conditions of registration.

Specific conditions of registration

The OfS may decide to impose a specific ongoing condition where it considers that a provider presents a specific risk that is not addressed by a general ongoing condition; to mitigate an increased risk that a provider may breach an ongoing condition of registration; or to prevent or remedy a breach. The specific ongoing condition will be targeted to mitigate the specific risk that is posed and will be focused on actions or activities by the provider that the OfS may require, or prohibit, to ensure that the provider is able to satisfy its ongoing conditions of registration.

Standards

Unless the context otherwise requires, the standards set for courses, programmes and modules and expected to be achieved in order for an award to be made.

Student consumer rights

As set out in the **CMA's** guidance 'UK higher education providers – advice on consumer protection law' there are three areas where providers have obligations to students under consumer protection law: information, which must be clear, accurate and timely; terms and conditions of contracts, which must be fair and transparent; organisational complaint handling processes and practices, which must be accessible, clear and fair.

Student Panel

A panel of students and student representatives that assists the OfS to ensure that students' perspectives are taken into account in all OfS activity.

Student protection plan

A plan outlining the actions a provider will take to minimise the impact of any risks to its students' continuation of study. The plan includes examples of events that might trigger action by the provider, such as the closure of a course, campus or location, the discontinuation of a discipline or market exit. This document must be approved by the OfS, and be readily available to current and potential students.

Student support

The government provides financial support for tuition fees and living costs for eligible students who live permanently in England and students from the European Union, who are studying eligible courses in England.

Student transfer

The movement of students between courses and/or providers.

Subcontractual arrangement

A relationship, based on a formal contract, in which a body with **degree awarding powers** (the **lead provider**) allows another provider (the **delivery provider**) to deliver all, or part, of a programme which has been designed, approved and owned by the degree awarding body. The lead provider or subcontracting provider retains overall control of the programme's content, delivery, assessment and quality assurance arrangements. Sometimes described as a franchise arrangement.

Suspension

The OfS may decide to suspend a provider's registration, in whole or in part, where the provider has breached its ongoing conditions of regulation and action needs to be taken to immediately reduce the impact of this on students or the taxpayer.

Teach out

Teach out may occur when a provider decides to discontinue provision in the longer term, but continues to teach existing students until their course is complete. It may also occur when the OfS deregisters a provider and allows the provider's existing students to complete their course while continuing to access **student support** because it is in the students' interest to do so. Teach out may be one of the measures identified by a provider in its **student protection plan**.

Teaching Excellence Framework (TEF)

A scheme for recognising excellent teaching, in addition to existing national quality requirements for providers. It provides information to help prospective students choose where to study.

Terms and conditions of funding

Also referred to as 'terms and conditions of grant' or 'terms and conditions associated with OfS and/or UKRI funding'. Terms and conditions attached to any funding given to providers by the OfS or UKRI under sections 39, 40 and 93 of the Higher Education and Research Act 2017. For example, grant funding for a particular purpose, such as a research project or a strategic development.

Tier 4

The UK operates a points-based immigration system underpinned by the principle of visa sponsorship. Tier 4 is the immigration category in which a student from outside the European Economic Area (or Switzerland) may be issued a visa to study in the UK.

UK Research and Innovation (UKRI)

A public body incorporating the seven Research Councils, Innovate UK, and the research and knowledge exchange functions of the Higher Education Funding Council for England (HEFCE).

University title (UT)

The word ‘university’ is a protected term, and not all higher education providers are universities. Those providers that wish to use the word in their title must apply for it and meet certain criteria, including holding **degree awarding powers**.

Value for money

Meeting the need for efficiency, economy, effectiveness and prudence in the administration and expenditure of financial resources.

Validation arrangement

A validated course is a module or programme which a **degree awarding body** approves to contribute, or lead, to one of its awards. The validated course is delivered by the provider that designed it and students on the course normally have a direct contractual relationship with that provider and not the validating provider. The validating provider remains responsible for the academic standards of the award granted in its name.