

Consultation

**Office for
Students**

OfS

Consultation on proposals to change how the Office for Students regulates further education colleges in England

This consultation runs from **2 December 2025**
to **10 February 2026**.

Reference: OfS 2025.77

Enquiries to: LLE@officeforstudents.org.uk

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The Office for Students (OfS) is the independent regulator for higher education in England. We aim to ensure that every student, whatever their background, has a fulfilling experience of higher education that enriches their lives and careers.

Our four regulatory objectives

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

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

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About this consultation

The Office for Students (OfS) is seeking views on proposals to change how it regulates further education colleges in England.

Timing Start: **2 December 2025**
End: **10 February 2026**

Who should respond? Anyone with an interest in the regulation of further education colleges.

We welcome the views of all types and sizes of higher education provider and are particularly (but not only) interested in hearing from: students, staff, academics and leaders at further education colleges currently offering higher education, or plan to offer higher education in the future.

How to respond Please respond by **10 February 2026**

Please use the online response form available at <https://survey.officeforstudents.org.uk/s/regulation-FECs/>

How we will treat your response We will summarise and/or publish the responses to this consultation on the OfS website (and in alternative formats on request). This may include a list of the providers and organisations that respond, but not personal data such as individuals' names, addresses or other contact details.

If you want the information that you provide to be treated as confidential, please tell us but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

The OfS will process any personal data received in accordance with all applicable data protection laws (see our privacy policy).¹

We may need to disclose or publish information that you provide in the performance of our functions, or disclose it to other organisations for the purposes of their functions. Information (including personal data) may also need to be disclosed in accordance with UK legislation (such as the Freedom of Information Act 2000, Data Protection Act 2018 and Environmental Information Regulations 2004).

Next steps We will publish a summary of responses to this consultation in early Summer. We will explain how and why we have arrived at our decisions, and how we have addressed any concerns raised

¹ Available at www.officeforstudents.org.uk/ofs-privacy/.

by respondents. We will then set out next steps in the policy and implementation process.

Enquiries

Email LLE@officeforstudents.org.uk

Alternatively, call our public enquiry line on 0117 931 7317.

If you require this document in an **alternative format**, or you need assistance with the online form, contact LLE@officeforstudents.org.uk. (**Please note:** this email address should **not** be used for submitting your consultation response.)

For more information about our work, please visit the OfS website:
www.officeforstudents.org.uk/

Executive summary

We are proposing changes to the way we regulate further education colleges in England. When a further education college offers higher education courses and is registered with the OfS, it is subject to regulation by both the Department for Education (DfE) and the Office for Students (OfS). We have heard from the sector that the complex regulatory landscape that further education colleges have to navigate can be a barrier to colleges diversifying their provision and offering higher education courses.²

Further education colleges play an important role in providing flexible and diverse higher education pathways for students. Registering with us enables colleges to access public funding and give students confidence that their institution meets our requirements for quality, student protection and support.

We anticipate that the sector will expand when the government introduces the Lifelong Learning Entitlement (LLE).³ That is why we think it is appropriate to consult on these changes now.

Our aim is to remove overlap of regulation for further education colleges already on the OfS Register. We also aim to make the process for further education colleges applying to enter the regulated higher education sector in England as smooth as possible.

For the purpose of this consultation a further education college means, a provider in the statutory further education sector established or designated under the Further and Higher Education Act 1992.⁴ These proposals are intended to:

- reduce duplication of regulation for eligible further education colleges regulated by the DfE
- make our registration assessments more efficient for eligible further education colleges by removing registration requirements where it is proportionate to do so.

Consultation proposals

To achieve our aims, we propose to disapply five of our initial conditions of registration and four general ongoing conditions of registration for eligible further education colleges where the DfE already has robust oversight in place:

- initial and ongoing condition A2 (access and participation statement)
- initial and ongoing condition D (financial viability and sustainability)
- initial conditions E7(a set of governing documents and business plans), E8 (fraud and inappropriate use of public funds) and E9 (Individuals)
- ongoing conditions E1 (public interest governance) and E2 (management and governance).

² See [Regulation, higher education, and further education colleges - Office for Students](#).

³ See [Lifelong Learning Entitlement - Office for Students](#).

⁴ See [Further and Higher Education Act 1992](#).

The majority of these proposals would apply to further education colleges that do not hold degree awarding powers (DAPs) or are not applying for DAPs.

Reasons for this consultation

We have recently made changes to OfS registration requirements to ensure that our tests remain suitable for the current and future context of the regulated higher education sector.⁵ This is necessary because the profile of providers seeking registration has shifted. New applicants are often less likely to have an established track record in delivering higher education compared with those registered when our processes were first introduced. We want to ensure that these new entrants are equipped to manage the increased risks facing the sector.

However, it is our view that statutory further education providers seeking OfS registration—without applying for DAPs—should not be assessed in the same way as entirely new providers.

We consider that the proposals in this consultation, if implemented, will give students, the public and the sector confidence that our regulation remains proportionate and risk-based, and we are registering providers efficiently and appropriately. These providers have the support and oversight of the DfE to deliver high quality provision, meet learners' needs and navigate current challenges. We are committed to ensuring that our regulation remains appropriate in this evolving context.

Next steps

The consultation will close on 10 February 2026. We will then analyse and consider the responses and make decisions about our proposals.

We are proposing that these changes would be implemented as soon as possible after any final decisions are made. We expect this to be in early Summer 2026.

⁵ See [Reforms to OfS registration requirements - Office for Students](#)

Introduction

1. This consultation sets out our proposals to disapply some of the OfS conditions of registration that apply to providers of higher education that are also providers in the statutory further education sector.
2. For the purpose of this document, a provider in the statutory further education sector refers to a further education corporation, a sixth-form college corporation, or a Designated Institution established or designated under the Further and Higher Education Act 1992.⁶ Collectively, these are referred to as **further education college/s** unless otherwise specified in this document.
3. In England, the Secretary of State for Education is the principal regulator for further education and sixth form colleges. When a further education provider offers higher education courses and is registered with the OfS, it is subject to oversight by both the DfE and the OfS. This dual regulation can sometimes create additional regulatory burden, as providers must comply with separate sets of requirements. Navigating these overlapping regulatory expectations can be resource-intensive and may lead to duplication of effort.
4. We are proposing that the changes set out in this consultation relating to the access and participation statement (proposal1) would apply, if introduced, to all further education colleges. The other proposed changes would apply only to further education colleges that do not hold or are not applying for DAPs. Providers with DAPs have wider responsibilities and are subject to different risks, which is why we propose to retain a wider set of OfS regulatory requirements for them.

⁶ See [Further and Higher Education Act 1992](#).

What we are consulting on

5. The conditions of registration we propose to disapply are included in table 1.

Table 1: Proposed conditions of registration to disapply

Proposal number	Condition	Initial or ongoing condition	Institutions we propose to disapply condition for
1	Condition A2 Access and participation statement	Initial	Further education colleges applying for OfS registration
1	Condition A2 Access and participation statement	Ongoing	All registered further education colleges
2	Condition D Financial viability and sustainability	Initial	Further education colleges applying for OfS registration that are not seeking DAPs
2	Condition D Financial viability and sustainability	Ongoing	Registered further education colleges without DAPs. Further education colleges that are making a DAPs application would be subject to this condition.
3	Condition E7 A set of governing documents and business plans	Initial	Further education colleges applying for OfS registration that are not seeking DAPs
3	Condition E8 Fraud and inappropriate use of public funds	Initial	Further education colleges applying for OfS registration that are not seeking DAPs
3	Condition E9 Individuals	Initial	Further education colleges applying for OfS registration that are not seeking DAPs
3	Condition E1 Public interest governance	Ongoing	Registered further education colleges without DAPs. Further education colleges that are making a DAPs application would be subject to this condition
3	Condition E2 Management and governance	Ongoing	Registered further education colleges without DAPs. Further education colleges that are making a DAPs application would be subject to this condition

6. The OfS has a power to impose specific ongoing conditions of registration. This would include if we subsequently have regulatory concerns about an individual higher education provider that

is subject to these proposals, allowing us to intervene directly if necessary to manage risk. This power would not be changed if we implemented the proposals set out in this consultation.⁷

7. This consultation is not a comprehensive review of all regulatory requirements affecting providers in the statutory further education sector. Instead, it concentrates on areas of regulation where there is current overlap of regulation between the DfE's and the OfS's regulatory requirements. We set out in more detail below why we are proposing to disapply the above conditions on this basis.
8. This consultation is published in accordance with sections 5(5) and 75(8) of the Higher Education and Research Act 2017 (HERA).⁸ In formulating these proposals, we have had regard to a range of relevant statutory and regulatory considerations including:
 - a. Our general duties under section 2 of HERA.⁹
 - b. The Public Sector Equality Duty.¹⁰
 - c. Statutory guidance issued by the Secretary of State.¹¹
 - d. The principles set out in the Regulators' Code.¹²
9. A full explanation of matters to which we have had regard is set out in Annex C.

Why are we making these proposals?

Regulation of the statutory further education sector

10. This consultation focuses on providers in the statutory further education sector because the DfE regulates these providers in a distinct way. This reflects their statutory prescribed legal status,¹³ their funding arrangements and governance structures. This means that further education colleges are subject to governance and accountability requirements that reflect their status and public responsibilities.¹⁴
11. The DfE provides an overarching framework for implementation of effective financial governance, management and other controls for further education colleges via the 'College financial handbook'.¹⁵ In addition, in November 2022, the Office for National Statistics (ONS) reclassified the statutory further education sector in England into the central government

⁷ See [Higher Education and Research Act 2017 - Section 6](#). The OfS may, at the time of an institution's registration or later, impose such conditions on its registration as the OfS may determine.

⁸ See [Higher Education and Research Act 2017](#).

⁹ See [Higher Education and Research Act 2017 - Section 2](#).

¹⁰ See [Public Sector Equality Duty: guidance for public authorities - GOV.UK](#).

¹¹ See [Guidance from government - Office for Students](#).

¹² See [Regulators' Code - GOV.UK](#).

¹³ See [Further and Higher Education Act 1992](#).

¹⁴ See [College financial handbook 2025: effective from 1 August - GOV.UK](#); [College oversight, improvement and intervention - GOV.UK](#).

¹⁵ See [College financial handbook - GOV.UK](#).

sector.¹⁶ The reclassification covered further education corporations (colleges), sixth form corporations and designated institutions. While those bodies remain independent organisations, reclassification has implications for the way that colleges manage their finances, and therefore for the monitoring and oversight undertaken by the DfE. Following reclassification, colleges are required to comply with the principles and practices of the ‘Managing public money’ governance framework,¹⁷ as set out in the ‘College financial handbook’, which includes requirements of accountability, transparency, value for money, ethical conduct, and that a college is managed in the public interest.

12. The Secretary of State for Education, acting through the DfE, supports colleges to succeed and intervenes where necessary to protect learners and public funds.¹⁸ The DfE’s approach includes intervention or targeted action such as notices to improve, extensive financial monitoring, alongside mechanisms such as:

- funding to support long-term changes as a result of intervention¹⁹
- the further education insolvency regime²⁰
- the statutory intervention powers available to the Secretary of State for Education.²¹

13. Intervention or targeted action may also involve a ‘Letter to improve’, which may include targeted action and mandate targeted support.

14. The Secretary of State’s intervention powers that apply to further education colleges and designated institutions are set out in section 56A of the Further and Higher Education Act 1992 (FHEA 1992),²² as amended by the Skills and Post-16 Education Act 2022.²³ The Secretary of State may exercise statutory intervention powers if satisfied that any of the following matters are met:

- a. ‘that the institution’s affairs have been or are being mismanaged by the governing body;
- b. that the institution’s governing body have failed to discharge any duty imposed on them by or for the purposes of any Act;

¹⁶ See [Further education reclassification - GOV.UK](#).

¹⁷ See [Managing public money - GOV.UK](#).

¹⁸ [College oversight, improvement and intervention - GOV.UK](#).

¹⁹ See [Help and support for colleges - GOV.UK](#).

²⁰ The further education insolvency regime was introduced through the Technical and Further Education Act 2017 (TFEA 2017), the Further Education Bodies (Insolvency) Regulations 2019, and the Education Administration Rules 2018 and amended in Skills and Post-16 Education Act 2022. The relevant legislation came into force on 31 January 2019.

²¹ See [Statutory intervention powers for the FE sector - GOV.UK](#).

²² See [Further and Higher Education Act 1992](#).

²³ See [Skills and Post-16 Education Act 2022](#).

- c. that the institution's governing body have acted or are proposing to act unreasonably with respect to the exercise of any power conferred or the performance of any duty imposed by or under any Act;
- d. that the institution is performing significantly less well than it might in all the circumstances reasonably be expected to perform or is failing or likely to fail to give an acceptable standard of education or training.
- e. that the education or training provided by an institution did not, or does not, adequately meet local needs.'

15. Where one or more of the above matters apply, the Secretary of State may take the following actions:

- a. 'remove all or any members of the institution's governing body.
- b. appoint new members to the governing body if there are vacancies (however arising).
- c. give to that body such directions as the Secretary of State thinks expedient as to the exercise of their powers and performance of their duties.'

16. The directions that may be given to a governing body by the Secretary of State may include:

- a. a direction requiring a governing body to make collaboration arrangements with such bodies and on such terms as may be specified in the direction.²⁴
- b. a direction requiring a governing body to make a resolution or take such other steps specified in the direction as may be required, for the body to be dissolved on a date specified in the direction.²⁵
- c. a direction requiring a governing body to transfer property, rights or liabilities specified in the direction, and take any other specified steps in the direction in connection with the transfer in relation to property, rights or liabilities so specified.

17. Following any exercise of the statutory intervention powers, the DfE will put in place arrangements for the oversight, monitoring and support for both administrative interventions and statutory interventions.

18. As noted in the introduction to this consultation, a further education college that offers higher education and is registered by the OfS is subject to dual regulation, which can sometimes create additional regulatory burden. In particular in relation to financial viability and sustainability, and management and governance, OfS registration imposes some requirements that overlap with those of the DfE.

19. Our initial view is that the college oversight, support and intervention framework for further education colleges set out from paragraph 11 is sufficient to justify reducing regulatory burden

²⁴ 'Collaboration arrangements' are defined in Section 166 of the Education and Inspections Act 2006.

²⁵ See Section 27A(1) at Further and Higher Education Act 1992.

for further education colleges without DAPs and that do not intend to seek DAPs, while allowing us to operate more efficiently and continue to protect the interests of students and public funds. Our view is that the statutory intervention powers afforded to the DfE in regulating further education colleges manage risk to the extent that continuing to apply the OfS conditions of registration in relation to financial viability and sustainability, and management and governance may no longer be appropriate and proportionate to risk.

20. In relation to our proposals on access and participation, our view is that the requirement on further education colleges may be duplication of regulation.
21. We are therefore proposing to make changes to remove this duplication of regulation under section 5(2) of HERA, which empowers the OfS to apply different conditions of registration to different descriptions of provider.
22. As noted at paragraph 6, we would also retain the ability to intervene if we had regulatory concerns in these areas by imposing one or more specific ongoing conditions of registration on the basis of risk. For example, we may do this if we assess that there is increased risk where a further education college without DAPs is extensively subcontracting the teaching of higher education courses that are validated by awarding organisations regulated by Ofqual.

Minimising regulatory burden

23. This consultation forms part of our broader commitment to minimise unnecessary regulatory burden while protecting the interests of students and public funding. The independent review of the OfS published in July 2024 included recommendations that the DfE and the OfS are to engage the sector in an ongoing, constructive dialogue with a view to reducing unnecessary regulatory burden. It also recommended that the OfS worked more collaboratively with other regulators to understand their collective requirements and identify opportunities to reduce areas of regulatory overlap and duplication.²⁶

Distinguishing between further education colleges that hold or do not hold DAPs

24. Throughout most of this consultation we draw a distinction between further education colleges with DAPs and without DAPs. This reflects a deliberate policy position: providers with DAPs are responsible for awarding qualifications that are of significant value to students, employers and the wider higher education sector. As such our view is that it is important to retain a fuller set of conditions of registration for these providers.
25. Providers with DAPs are required to comply with additional regulatory criteria, as set out in the criteria for the authorisation for DAPs in the regulatory framework.²⁷ The criteria 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.²⁸ To be suitable to be awarded and retain DAPs a provider must be

²⁶ See [Fit for the Future: Independent Review of the Office for Students - GOV.UK](#).

²⁷ See [PART IV – Validation, degree awarding powers and university title - Office for Students](#).

²⁸ See [Regulatory advice 12: How to apply for degree awarding powers - Office for Students](#).

able to demonstrate that it has understood and planned for the resources and governance necessary to set and maintain academic standards securely.

26. We assess a provider's financial viability and sustainability, and its management and governance as an initial assessment of any application for DAPs. This is assessed again before any award for DAPs is made. The regulatory framework, at paragraphs 221 and 249, sets out that for further education colleges, where compliance with some conditions of registration is satisfied by assurances provided by the DfE, for DAPs purposes, the further education college must demonstrate that it is able to satisfy these conditions directly itself.²⁹ This means that for DAPs we have always set out an expectation that a further education college awarded DAPs, or that is applying for DAPs, can demonstrate that it meets these initial and ongoing conditions of registration.
27. Additionally, providers with DAPs operate autonomously and are not reliant on an OfS-registered validating partner for the awarding of degrees. This independence can increase risk, particularly in scenarios involving financial difficulties or potential institutional closure. In such cases, providers without DAPs typically benefit from the support of a validating partner that can assist with student transfer arrangements, the awarding of qualifications, and continuity of provision. Moreover, where a provider with DAPs faces closure this creates risks for students studying courses it validates at other providers, and potentially to the financial sustainability of those other providers as well. We recently published an Insight brief highlighting the important role that validating partners play in protecting students.³⁰
28. We have observed risks to public funding and to the interests of students arising from subcontractual partnerships that are not managed effectively by the lead provider. This can arise for a number of reasons, including where there is rapid growth in student numbers within the partnership without sufficient oversight by the lead provider. This growth has raised concerns about the effective oversight and governance of some of these arrangements and the protection of public and student interests.³¹ Against this landscape, the policy context is evolving to address emerging risk. For example, the DfE recently consulted on strengthening oversight of partnership delivery in higher education,³² and we recently consulted on new requirements for registered providers engaged in those partnerships.³³ Having DAPs is an important pre-requisite to entering into subcontractual arrangements for degree level courses and we therefore do not consider it appropriate to reduce regulatory controls relating to such providers in this context. As such, we are proposing that the potential disapplication of the conditions of registration that relate to financial viability and sustainability and to management and governance should not apply to further education colleges with DAPs or further education colleges that have applied for DAPs.
29. We recognise that further education colleges that do not have DAPs could enter into subcontracting relationships with Ofqual regulated awarding organisations in relation to certain

²⁹See [Regulatory framework for higher education in England - Office for Students](#).

³⁰See [Protecting the interests of students when universities and colleges close - Office for Students](#).

³¹ See [Subcontractual arrangements in higher education - Office for Students](#).

³² See [Franchising in higher education - GOV.UK](#).

³³ See [Consultation on new requirements for the oversight of subcontractual arrangements in English higher education - Office for Students](#).

higher education courses. This type of activity is likely to increase with the introduction of the LLE. If, following any implementation of our proposals, we have concerns about a further education college's oversight of these type of arrangements, or indeed other regulatory concerns, we may consider imposing one or more specific ongoing conditions of registration.

Consultation proposals

Proposal 1: Disapply condition A2 (access and participation statement)

What we are proposing

30. Condition A2 applies to Approved (fee cap) providers charging fees up to the basic amount and to all Approved providers.³⁴ This initial and ongoing condition requires a provider to publish an access and participation statement setting out its commitment to supporting access and participation in higher education by students from disadvantaged backgrounds and underrepresented groups. It also requires it to update and re-publish the statement on an annual basis. This is intended to promote transparency and accountability in how providers support students from underrepresented backgrounds.

31. We propose to disapply condition A2 as set out in table 2.

Table 2: Proposal to disapply condition A2

Condition	Disapply for
Initial condition A2	Further education colleges applying for OfS registration
Ongoing condition A2	All registered further education colleges

Why we are proposing this

32. As a prerequisite of receiving public funding, the DfE requires further education colleges to submit and publish annual accountability statements that address how the college will meet the Local Needs Duty and to set objectives accordingly.³⁵ This includes how further education colleges will address barriers to participation, support disadvantaged learners, and improve outcomes for underrepresented groups where this has been identified as a need of their local community and economy.

33. We consider that our requirement to submit and publish a separate access and participation statement to comply with condition A2, may create duplication for further education colleges that are already subject to a similar reporting requirement as part of the DfE requirement for receiving public funding. Disapplying condition A2 for further education colleges is likely to reduce administrative duplication without compromising a college's commitment to equality of opportunity. As such, our initial view is that this proposal would be unlikely to have any negative impact on students.

34. **Unlike the rest of the proposals in this consultation, which apply only to further education colleges without DAPs and that do not apply for DAPs, we propose to disapply condition A2 for all further education colleges, including those with DAPs.** This reflects that the DfE's accountability statement requirement applies universally across the statutory further education sector. It also reflects a proportionate and risk-based approach to regulation, recognising that, in the case of condition A2, the DfE's existing requirements are

³⁴ See [Regulatory framework for higher education in England - Office for Students](#), paragraphs 323 to 331.

³⁵ See [Section 52B of the Further and Higher Education Act 1992 as amended](#).

sufficient to ensure transparency and accountability in how further education colleges support access and participation.

35. If implemented, this proposal would mean that a further education college would no longer be required to publish an access and participation statement, and update and re-publish this statement on an annual basis. Instead, its existing reporting to the DfE would continue to serve as the primary mechanism for demonstrating its commitment to widening participation.

Consultation questions 1 and 2

Question 1

Do you agree with the proposal to disapply initial condition A2 (access and participation statement) for further education colleges applying for OfS registration? Please provide a reason for your answer.

Question 2

Do you agree with the proposal to disapply ongoing condition A2 (access and participation statement) for all registered further education colleges? Please provide a reason for your answer.

Proposal 2: Disapply condition D (financial viability and sustainability)

What we are proposing

36. Condition D requires a provider to be financially viable and financially sustainable and have the necessary financial resources to provide and fully deliver the higher education courses it has advertised and as it has contracted to deliver. It must also have the necessary financial resources to continue to comply with all conditions of its registration. This condition is designed to protect students and public funds by ensuring that providers can continue to operate effectively.
37. We propose to disapply condition D as set out in table 3.

Table 3: Proposal to disapply condition D

Condition	Disapply for
Initial condition D	Further education colleges applying for OfS registration that are not seeking DAPs
Ongoing condition D	All registered further education colleges without DAPs. Further education colleges that are making a DAPs application would be subject to this condition.

38. We propose that if a further education college applies for DAPs, ongoing condition D will be imposed. For further education colleges applying for registration and DAPs, initial condition D will be imposed.

Why we are proposing this

39. We are consulting on these changes to reduce regulatory duplication. We already adopt a different regulatory approach to monitoring the financial viability and sustainability of further education colleges. The current position is that further education colleges are not required to submit financial information to the OfS via the annual financial return (AFR) in the same way as other registered providers.³⁶ Instead, they submit their financial information to the DfE, and we can access this information through a data-sharing agreement. It is also standard practice for us to review the DfE's financial dashboards and receive updates accordingly.
40. The further education bodies insolvency regime provides a statutory framework for managing financial failure in colleges.³⁷ It includes provisions for education administration, where the special objective of the education administration is to avoid or minimise disruption to the studies of the existing students of the further education body as a whole and ensure that it becomes unnecessary for the body to remain in education administration for that purpose. It also includes provisions for normal insolvency procedures.
41. Given this framework, we think that the regulation of financial viability and sustainability could be further simplified for further education colleges without DAPs through disapplying initial and ongoing condition D. In our view, this would result in a more streamlined and coherent

³⁶ See [Regulatory advice 14: Guidance for providers for the Annual Financial Return - Office for Students](#).

³⁷ See [Further education bodies: insolvency guidance - GOV.UK](#).

regulatory system. We think this would particularly benefit a college that may require support or intervention, as it would engage with a single regulator rather than two.

42. For further education colleges with DAPs, the situation is different. As noted above, these providers award degrees directly and operate with greater autonomy. As such it is appropriate that we maintain greater oversight of their financial viability and sustainability, and retain the ability to intervene directly where appropriate. This is achieved through setting and enforcing our own requirements through initial and ongoing condition D.

Consultation questions 3 and 4

Question 3

Do you agree with the proposal to disapply initial condition D (financial viability and sustainability) for further education colleges applying for OfS registration that are not seeking DAPs? Please provide a reason for your answer.

Question 4

Do you agree with the proposal to disapply ongoing condition D (financial viability and sustainability) for registered further education colleges without DAPs (and have not applied for DAPs)? Please provide a reason for your answer.

Proposal 3: Disapply initial conditions E7 (governing documents and business plans), E8 (fraud and inappropriate use of public funds) and E9 (individuals) and ongoing conditions E1 (public interest governance) and E2 management and governance)

What we are proposing

43. We propose to disapply conditions E7, E8, E9, E1 and E2 as set out in table 4.

Table 4: Proposal to disapply conditions E7, E8, E9, E1 and E2

Condition	Requirements	Disapply for
Initial condition E7 (A set of governing documents and business plans)	<p>Part 1: A set of governing documents The provider must have a set of governing documents which will enable effective governance of the provider in practice.</p> <p>Part 2: Business plans The provider must have a business plan which meets relevant requirements and covers the provider’s planned activities over a five-year period and the ability to deliver the business plan in practice.</p>	Further education colleges applying for OfS registration that are not seeking DAPs
Initial condition E8 (Fraud and inappropriate use of public funds)	<p>The provider must have in place comprehensive arrangements in relation to the higher education it plans to provide if registered that could reasonably be considered as being adequate and effective for the purposes of detecting, preventing and stopping any form of conduct that could potentially amount to a relevant fraud offence or the inappropriate use of relevant public funds.</p> <p>The provider must have a satisfactory track record in relation to receiving and/or accessing public funds.</p>	Further education colleges applying for OfS registration that are not seeking DAPs
Initial condition E9 (Individuals)	<p>Part 1: Knowledge and expertise The provider must have key individuals who have sufficient knowledge and expertise to facilitate the provider to comply with the ongoing conditions of registration, to deliver in practice, the provider’s business plan, and deliver in practice, the provider’s fraud and public money arrangements.</p> <p>Part 2: Fit and proper persons Relevant individuals at the provider must, in the OfS’s judgement, be fit and proper persons for the purpose of ensuring that the provider is suitable to access and receive public funds; public trust and confidence in the higher education sector is maintained; and the provider is suitable to protect the interests of students.</p>	Further education colleges applying for OfS registration that are not seeking DAPs

Condition	Requirements	Disapply for
Ongoing condition E1 (public interest governance)	The provider's governing documents must uphold the public interest governance principles that are applicable to the provider.	All registered further education colleges without DAPs. Further education colleges that are making a DAPs application would be subject to this condition
Ongoing condition E2 (management and governance)	The provider must have in place adequate and effective management and governance arrangements to: <ul style="list-style-type: none"> 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 registration 	All registered further education colleges without DAPs. Further education colleges that are making a DAPs application would be subject to this condition

44. We propose that if a further education college applies for DAPs, ongoing conditions E1 and E2 will be imposed. For further education colleges applying for registration and DAPs, initial conditions E7, E8 and E9 will be imposed.

45. Under section 13(b) of HERA, the OfS can set conditions of registration that include a public interest governance condition.³⁸ Section 14 of HERA explains that this means a provider's governing documents should reflect certain principles.³⁹ These principles are designed to help ensure that providers operate in ways that serve the public interest. You can find these principles in Annex B of our regulatory framework.⁴⁰

46. Some public interest governance principles apply to all registered providers, while others are specific to those with DAPs or those in receipt of funding from the OfS or UK Research and Innovation (UKRI).⁴¹ These principles are built into two key conditions: E1 (public interest governance) and E2 (management and governance).

³⁸ See [Higher Education and Research Act 2017 - Section 13](#).

³⁹ See [Higher Education and Research Act 2017 - Section 14](#).

⁴⁰ See [Annex B: Public interest governance principles - Office for Students](#).

⁴¹ See [UKRI – UK Research and Innovation](#).

47. We also test management and governance when a provider applies for OfS registration. This is done through assessing compliance with initial conditions E7, E8 and E9, which require a provider to:

- a. have a set of governing documents which will enable the effective governance of the provider in practice, and a business plan which meets relevant requirements (condition E7).
- b. have in place comprehensive arrangements for the purposes of detecting, preventing and stopping fraud and the inappropriate use of public funds. The provider must also have a satisfactory track record in relation to receiving and/or accessing public funds (condition E8).
- c. have key individuals who have sufficient knowledge and expertise to facilitate the provider to comply with the ongoing conditions of registration applicable to it, deliver, in practice, the provider's business plan, and deliver, in practice, the provider's fraud and public money arrangements. The condition also requires relevant individuals to be fit and proper (condition E9). The provider must have relevant individuals who are fit and proper for the purposes of ensuring that:
 - the provider is suitable to access and receive public funds
 - public trust and confidence in the higher education sector is maintained; and
 - the provider is suitable to protect the interests of students.

48. The effect of proposal 3 is that we would not set or enforce our own rules around public interest governance for these providers.

Why we are proposing this

49. We are proposing to disapply these conditions because the DfE already regulates these providers through a robust framework. This includes statutory intervention powers (as set out in paragraphs 14-17), governance requirements under the Further and Higher Education Act 1992, and expectations set out in the Managing public money framework.⁴² Together these mechanisms are designed to ensure that further education colleges act in the public interest. The DfE provides oversight of and support to further education colleges and can step in when serious concerns arise – particularly around management and governance. The Further and Higher Education Act 1992 also sets out clear governance responsibilities, including the requirement for colleges to have a governing body and senior leadership roles defined in the instrument and articles of government.⁴³

50. Given this level of oversight, our initial view is that it is proportionate to disapply our own conditions (initial conditions E7, E8 and E9 and ongoing conditions E1 and E2) for further education colleges without DAPs. We consider that this will generally avoid regulatory duplication. We acknowledge that not all our requirements are duplicated, such as the governance principles on freedom of speech and academic freedom. See Annex C for our assessment of how we had regard to this in formulating the proposals.

⁴² See [Further and Higher Education Act 1992](#); [Managing public money - GOV.UK](#).

⁴³ Established under the [Further and Higher Education Act 1992](#).

51. For further education colleges with DAPs, the situation is different. As noted above, these providers award degrees directly and operate with greater autonomy. Because of this it is important that we retain our own oversight of their governance and management. Applying and enforcing initial conditions E7, E8 and E9 and ongoing E1 and E2 will ensure that we can intervene directly where appropriate.

Consultation questions 5 and 6

Question 5

Do you agree with the proposal to disapply initial conditions E7 (governing documents and business plans), E8 (fraud and inappropriate use of public funds) and E9 (individuals) for further education colleges applying for OfS registration that are not seeking DAPs? Please provide a reason for your answer.

Question 6

Do you agree with the proposal to disapply ongoing conditions E1 (public interest governance) and E2 (management and governance) for registered further education colleges without DAPs (and have not applied for DAPs)? Please provide a reason for your answer.

Alternatives considered

52. In developing these proposals, we considered retaining the current approach to regulating financial viability and sustainability, and management and governance, for further education colleges without DAPs. This would have meant continuing to impose the relevant initial and ongoing conditions of registration under our regulatory framework, alongside the existing oversight provided by the DfE. However, we concluded that this option would not achieve the aim of the proposal to reduce regulatory duplication and burden while protecting the interests of students and taxpayers.
53. We discounted this option on the basis that it would not streamline regulation for further education colleges or support more efficient use of resources - either for providers or for the OfS. Instead, the proposals set out in this consultation aim to reduce duplication by disapplying certain conditions of registration for further education colleges without DAPs, while retaining the ability for us to intervene where necessary through a specific condition of registration for individual providers, based on risk. We consider this approach to be consistent with our general duties, including the need to have regard to the principles of proportionality and efficiency, and to support our commitment to minimising unnecessary regulatory burden while maintaining appropriate safeguards for students and public funding.
54. We also considered reducing regulatory oversight further than the proposals set out in this document, for example disapplying additional conditions of registration. We discounted this option as we consider there is no comparable duplication with the DfE's regulation beyond the areas in scope of this consultation.

How we propose to implement the proposals

Timing

55. These proposals would be implemented as soon as possible after any final decisions are made.
56. Subject to consideration of the views of respondents to this consultation, we propose to follow the timetable set out below:
- a. The consultation closes on 10 February 2026.
 - b. We aim to publish our decisions about whether to adopt these proposals, with or without amendment, in early Summer 2026.
 - c. We aim to implement the proposals at the same time as decisions are published.
57. We expect that there may be some further education colleges that wish to apply to register with the OfS while the consultation is open, or further education colleges that are in the registration process before the consultation is published. We will engage with affected further education colleges on a case-by-case basis to discuss the assessment of their applications. We may, for example, consider deferring the assessment of the conditions subject to consultation until the outcome of the consultation is known.

Engagement with the DfE

58. If the proposals set out in this consultation are adopted, we will engage and share information with the DfE where appropriate and in accordance with our information sharing powers in HERA.
59. At the point of registration, we expect to engage with the DfE to ensure that any material concerns relating to a college's financial health or governance are appropriately considered. This may include a process for us to 'sense-check' registration applications from further education colleges, where the DfE holds relevant information that could inform our assessment of the provider's compliance with other initial conditions of registration that will continue to apply to it.

Consequential amendments

60. If the proposals in this consultation are implemented, with or without amendments, we expect that we would make a number of consequential changes to the regulatory framework and published regulatory advice.
61. We would expect to make consequential changes (or provide clarificatory guidance) in relation to:

The regulatory framework and 'Regulatory advice 12: How to apply for degree awarding powers'.⁴⁴

⁴⁴ See [Regulatory framework for higher education in England - Office for Students](#); [Regulatory advice 12: How to apply for degree awarding powers - Office for Students](#).

62. For example in relation to:

- a. Ensuring that affected conditions continue to apply to further education colleges with DAPs and those applying for DAPs.
- b. Process changes to how we will assess financial viability and sustainability and management and governance when assessing a further education college's eligibility and suitability for DAPs, to reflect that if a further education college intends to seek DAPs we would expect to seek information from the DfE.
- c. Setting out an extended indicative timeframe for the DAPs assessment period for a further education college that is applying for DAPs where the college did not have to comply with condition D and conditions E1 and E2 as ongoing conditions of registration.

63. We would also expect to make consequential changes (or provide clarificatory guidance) in relation to:

'Regulatory advice 3: How to register with the Office for Students'⁴⁵ and 'Regulatory notice 7'.⁴⁶

64. For example in relation to amending the registration application requirements notice, to remove:

- a. the requirements for a further education college to submit an access and participation statement and a link to where it is published
- b. the requirements that relate to initial condition D
- c. the requirements that relate to initial conditions E7, E8, E9.

Consultation questions 7, 8 and 9

Question 7

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

Question 8

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

Question 9

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

⁴⁵See [Regulatory advice 3: How to register with the Office for Students - Office for Students](#)

⁴⁶ See [Regulatory notice 7: Application requirements notice - Office for Students](#)

Documents referred to in this consultation

In this consultation we refer to the following documents:

Securing student success: Regulatory framework for higher education in England (available at: www.officeforstudents.org.uk/publications/securing-student-success-regulatory-framework-for-higher-education-in-england/)

This publication sets out the OfS's approach to regulation of English higher education providers.

Regulatory advice 3: How to register with the Office for Students (available at: <https://www.officeforstudents.org.uk/publications/regulatory-advice-3-how-to-register-with-the-office-for-students/>)

This publication sets out the guidance to providers that make an application for registration with the OfS.

Regulatory notice 7: Application requirements notice (available at: <https://www.officeforstudents.org.uk/publications/regulatory-notice-7-application-requirements-notice/>)

This publication sets out the application requirements for an OfS registration application.

Regulatory advice 12: How to apply for degree awarding powers (available at: <https://www.officeforstudents.org.uk/publications/regulatory-advice-12-how-to-apply-for-degree-awarding-powers/>)

This publication sets out guidance for existing and new providers of higher education in England that wish to apply to the OfS for authorisation to use DAPs.

Regulatory advice 14: Guidance for providers for the Annual Financial Return (available at: <https://www.officeforstudents.org.uk/publications/regulatory-advice-14-guidance-for-annual-financial-returns/>)

This publication sets out guidance about the information that a provider is required to submit as part of its financial monitoring returns to the OfS.

The OfS strategy 2025 to 2030 (available at: [The OfS strategy 2025 to 2030 - Office for Students](https://www.officeforstudents.org.uk/publications/the-ofs-strategy-2025-to-2030))
This publication sets out the OfS's new strategy for 2025 to 2030.

Consultation on new requirements for the oversight of subcontractual arrangements in English higher education (available at: <https://www.officeforstudents.org.uk/publications/consultation-on-new-requirements-for-the-oversight-of-subcontractual-arrangements-in-english-higher-education/>)

This publication sets out the OfS's proposals to implement new requirements for English higher education providers relating to subcontractual provision.

Insight brief: Protecting the interests of students when universities and colleges close (available at: <https://www.officeforstudents.org.uk/publications/protecting-the-interests-of-students-when-universities-and-colleges-close/>)

This publication sets out how the OfS works with a university or college when it closes with the aim of reducing the impact on students.

Fit for the future: higher education regulation towards 2035 (available at: <https://www.gov.uk/government/publications/fit-for-the-future-independent-review-of-the-office-for-students>)

This publication outlines the findings and recommendations for the independent review of the OfS.

Report – Investigation into student finance for study at franchised higher education providers (available at: <https://www.nao.org.uk/reports/investigation-into-student-finance-for-study-at-franchised-higher-education-providers/>)

This publication is a report of the National Audit Office which sets out where franchised providers sit within the higher education regulatory framework; outlines the risks to public funds; and makes recommendations to strengthen assurance.

Strengthening oversight of partnership delivery in higher education – Government consultation January 2025 (available at:

<https://www.gov.uk/government/consultations/franchising-in-higher-education>)

This publication sets out the government's proposals to strengthen oversight of subcontracted delivery of higher education, also known as franchising.

Further education bodies: insolvency guidance (available at:

<https://www.gov.uk/government/publications/further-education-bodies-insolvency-guidance>)

This publication sets out guidance for governors on the insolvency regime for further education and sixth-form colleges.

Secretary of State for Education statutory intervention powers for the further education sector (available at: <https://www.gov.uk/government/publications/statutory-intervention-powers-for-the-fe-sector>)

This publication sets out guidance on the powers the Secretary of State for Education can use to intervene in further education providers.

Abbreviations

DAPs: degree awarding powers

DfE: Department for Education

HEFSA: Higher Education (Freedom of Speech) Act 2023

HERA: Higher Education and Research Act 2017

LLE: Lifelong Learning Entitlement

OfS: the Office for Students

Annex A: Changes proposed for initial conditions of registration

Table 5: Changes proposed for initial conditions of registration

Current initial condition	Applies to	Proposed changes
A1 Access and participation plan	Providers applying in the Approved (fee cap) category intending to charge fees above the basic amount to qualifying persons on qualifying courses	Remain the same
A2 Access and participation statement	Providers applying in the Approved category, or the Approved (fee cap) category intending to charge fees up to the basic amount to qualifying persons on qualifying courses	Disapply this condition for a further education college applying for OfS registration (proposal 1)
B3 Student outcomes	All providers	Remain the same
B7 Quality and B8 standards	All providers	Remain the same
C5 Treating students fairly	All providers	Remain the same
D Financial viability and sustainability	All providers	Disapply this condition for a further education college applying for OfS registration that is not seeking DAPs (proposal 2)
E7 A set of governing documents and business plans	All providers	Disapply this condition for a further education college applying for OfS registration that is not seeking DAPs (proposal 3)
E8 Fraud and inappropriate use of public funds	All providers	Disapply this condition for a further education college applying for OfS registration that is not seeking DAPs (proposal 3)
E9 Individuals	All providers	Disapply this condition for a further education college applying for OfS registration that is not seeking DAPs (proposal 3)

Annex B: Changes proposed for general ongoing conditions of registration

Table 6: Changes proposed for general ongoing conditions of registration

Current ongoing condition	Applies to	Proposed changes
A1 Access and participation plan	Providers applying in the Approved (fee cap) category intending to charge fees above the basic amount to qualifying persons on qualifying courses	Remain the same
A2 Access and participation statement	Providers applying in the Approved category, or the Approved (fee cap) category intending to charge fees up to the basic amount to qualifying persons on qualifying courses	Disapply this condition for all registered further education colleges (proposal 1)
B1 Academic experience	All providers	Remain the same
B2 Resources, support and student engagement	All providers	Remain the same
B3 Student outcomes	All providers	Remain the same
B4 Assessment and awards	All providers	Remain the same
B5 Sector-recognised standards	All providers	Remain the same
B6 Teaching Excellence Framework participation	All providers that fulfil the 'eligibility requirements' ⁴⁷	Remain the same
C2 Student complaints scheme	All providers	Remain the same
C4 Student protection directions	All registered providers, except Further Education Bodies (as defined in section 4 of the Technical and Further Education Act 2017)	Remain the same
D Financial viability and sustainability	All providers	Disapply this condition for registered further education colleges without DAPs and that have not applied for DAPs (proposal 2)
E1 Public interest governance	All providers	Disapply this condition for registered further education colleges without DAPs (and

⁴⁷ See [Securing student success: Regulatory framework for higher education in England](#) at paragraph 357.

		have not applied for DAPs) (proposal 3)
E2 Management and governance	All providers	Disapply this condition for registered further education colleges without DAPs (and have not applied for) DAPs (proposal 3)
E6 Harassment and sexual misconduct	All providers	Remain the same

Annex C: Matters to which we have had regard in reaching our proposals

1. This annex sets out an assessment of some of the matters to which we have had regard in formulating the proposals.

The OfS's general duties

2. In formulating these proposals, we have had regard to our general duties as set out in section 2 of HERA.⁴⁸ These are:
 - (a) The need to protect the institutional autonomy of English higher education providers.
 - (aa) The need to promote the importance of freedom of speech within the law in the provision of higher education by English higher education providers.
 - (ab) The need to protect the academic freedom of academic staff at English higher education providers.
 - (b) The need to promote quality, and greater choice and opportunities for students, in the provision of higher education by English higher education providers.
 - (c) The need to encourage competition between English higher education providers in connection with the provision of higher education where that competition is in the interests of students and employers, while also having regard to the benefits for students and employers resulting from collaboration between such providers.
 - (d) The need to promote value for money in the provision of higher education by English higher education providers.
 - (e) The need to promote equality of opportunity in connection with access to and participation in higher education provided by English higher education providers.
 - (f) The need to use the OfS's resources in an efficient, effective and economic way, and
 - (g) so far as relevant, the principles of best regulatory practice, including the principles that regulatory activities should be—
 - (i) transparent, accountable, proportionate and consistent, and
 - (ii) targeted only at cases in which action is needed.
3. In formulating these proposals, we have given particular consideration to (aa), (ab) (b), (d), (e), (f) and (g), which are set out below.

Freedom of speech and academic freedom

4. In developing these proposals, we have considered our general duties, including our general duties to have regard to the need to: (aa) promote the importance of freedom of speech within the law in English higher education; and (ab) protect the academic freedom of academic staff at English higher education providers.
5. We have considered the consequences of disapplying ongoing conditions E1 and E2 (the OfS's existing requirements which regulate in relation to freedom of speech and academic

⁴⁸ See [Higher Education and Research Act 2017 - Section 2](#).

freedom) for further education colleges that do not have, and have not applied for, DAPs. In practical terms, this would mean that the OfS would not have, in respect of this category of further education colleges, the regulatory tools of conditions E1 and E2 (by reference to the relevant public interest governance principles), to regulate in relation to freedom of speech and academic freedom. However, the OfS would have the ability to regulate these matters via a specific ongoing condition of registration as necessary and appropriate.

6. The Higher Education (Freedom of Speech) Act 2023 (HEFSA) introduced into HERA new statutory duties on the governing bodies of all registered higher education providers in respect of freedom of speech and academic freedom.⁴⁹ These statutory duties require registered providers to:
 - a. promote the importance of freedom of speech within the law and academic freedom
 - b. take steps that, having particular regard to the importance of freedom of speech, are reasonably practicable for them to take in order to secure freedom of speech within the law for their staff, students, members and visiting speakers
 - c. maintain a code of practice setting out, amongst other things, the provider's values relating to freedom of speech and an explanation of how those values uphold freedom of speech.
7. These duties came into force on 1 August 2025. These duties will continue to apply directly to further education colleges that are registered higher education providers.
8. If the OfS has concerns that any provider, including further education colleges that do not have and have not applied for DAPs, are not discharging these duties, it is able to impose a specific ongoing condition of registration under section 6 of HERA.
9. Currently, section 6 of HEFSA requires the OfS to ensure that it has in place initial and ongoing conditions of registration applicable to registered providers which require that
 - a. providers' governing documents are consistent with compliance with the statutory duties mentioned at paragraph 6 above
 - b. providers have in place adequate and effective management and governance arrangements to secure compliance with those statutory duties.
10. Section 6 has not yet been commenced and so is not yet in force. If it is commenced, there will be a statutory requirement on the OfS to introduce initial and ongoing conditions to this effect, applicable to all registered providers, including further education colleges.
11. However, the government has indicated in its June 2025 policy paper on 'The future of the Higher Education (Freedom of Speech) Act 2023' that it plans to seek to amend section 6 of HEFSA and give the OfS a power rather than a duty. The government's policy paper states:

'Section 6 of the act [HEFSA], subject to securing an appropriate legislative vehicle and to its Parliamentary process, will be amended to give the OfS a power, rather than a duty, to

⁴⁹ See [Higher Education \(Freedom of Speech\) Act 2023](#).

put in place initial and ongoing conditions of registration on providers requiring all or any of the following:

- that HE [higher education] providers' governing documents are consistent with compliance by the governing body of the provider with its duties under new sections A1 to A3 of the 2017 act [HERA]
- that HE providers have in place adequate and effective management and governance arrangements to secure compliance by the governing body with those duties
- that HE providers comply with their duties under new sections A1 to A3 of the 2017 act [HERA].⁵⁰

12. In any event, this means that it is possible that new, additional, and/or revised regulatory requirements in respect of freedom of speech and academic freedom may, in the future, apply to further education colleges that do not have, and have not applied for, DAPs.

Quality, choice and opportunities

13. These proposals seek to ensure that students can choose from a range of providers that are able to deliver high quality higher education:

- a. **Maintaining quality.** We are not proposing to disapply conditions relating to academic experience, student outcomes or sector-recognised standards. This ensures consistency in our approach to quality and ensures that students studying higher education courses at a further education college continue to receive high quality education regardless of the provider's regulatory pathway.
- b. **Supporting innovation and diversity.** By streamlining registration for further education colleges without DAPs, one of our aims is to reduce barriers for these providers to enter the regulated higher education sector – increasing student choice and access to diverse provision.
- c. **Protecting students' interests.** The proposals ensure that quality and student protection remain central to our regulatory approach by retaining the ability to intervene where risks to students arise, including through a specific condition of registration.

14. Our provisional view is that these proposals will have a positive effect on the higher education options available for students by making it easier for high quality further education colleges not seeking DAPs to enter and remain in the regulated HE sector.

Value for money

15. Value for money in the provision of higher education is important for students and taxpayers. Students normally pay significant sums for their higher education and incur debt for tuition fees and maintenance costs, and student loans are taxpayer-backed. We think that our proposals will reduce duplication of regulatory burden allowing further education colleges to focus more of their resources on delivering high quality teaching and student support, rather than duplicative compliance activities. This is especially important in a financially constrained environment.

⁵⁰ See page 18 of 'The future of the Higher Education (Freedom of Speech) Act 2023', available at [The future of the Higher Education \(Freedom of Speech\) Act 2023 - GOV.UK](#).

Equality of opportunity

16. Our overall approach to regulation is designed to promote equality of opportunity in connection with access to, and participation in, higher education. This means that we are concerned with ensuring that students from disadvantaged or underrepresented backgrounds can access higher education and succeed on and beyond their courses.
17. Our Equality of Opportunity Risk Register identifies the risk that students may not have equal opportunity to access a sufficiently wide variety of higher education course types.⁵¹ This may result in restricted choice for students with certain characteristics, which may in turn lead to lower rates of progression to higher education, reduced continuation rates, and lower course attainment for these students. We consider that further education colleges, including those located in different regions or offering diverse modes of delivery, can play an important role in expanding the range of higher education options available to students. Our proposals aim to offer a more streamlined registration process that is appropriate and proportionate to regulatory risk for eligible further education colleges seeking OfS registration, helping to increase access to flexible and locally relevant provision across England.
18. We acknowledge that proposal 1, to disapply initial and ongoing condition A2 for all further education colleges may be perceived as placing less importance on equality of opportunity for students at further education colleges. Our proposals are not intended to deprioritise equality of opportunity, rather they are intended to minimise duplication and burden while continuing to protect the interests of students and taxpayers. Our initial view is that this can be achieved as further education colleges are subject to a similar reporting requirement to the DfE.

Efficient, effective and economic use of the OfS's resources

19. We have considered the need to use our resources in an efficient and effective way by:
 - a. **Streamlining regulatory processes.** The proposals reduce burden for the relevant further education colleges and the OfS.
 - b. **Focusing OfS resource on higher-risk areas.** The proposals enable us to allocate our resources where risks to students or public funds are highest.
 - c. **Aligning with strategic priorities.** The proposals support the OfS 2025-2030 strategy, particularly the priority of sector resilience, by ensuring that regulation is proportionate and risk-based.⁵²
20. In developing these proposals, we have taken a balanced and evidence-based approach, ensuring that our general duties under HERA are met. The consultation reflects our commitment to minimise unnecessary regulatory burden, maintain high standards and accountability, promote equality and access, and use public resources wisely.

The principles of best regulatory practice

21. We have considered the principles of best regulatory practice, in particular of proportionality. Our proposals seek to ensure that the OfS can protect the interests of students and taxpayers, while balancing this with the interests of providers. We have also set out the alternative options

⁵¹ See Risk 5, [Equality of Opportunity Risk Register - Office for Students](#).

⁵² See [The OfS strategy 2025 to 2030 - Office for Students](#).

we've considered and why we consider the proposed approach to be proportionate and risk-based.

22. We have also considered the principle that regulatory activities should be consistent. We acknowledge that there is a risk of the proposals being perceived as creating inconsistency of regulation across different types of registered providers. We consider that if the proposals were implemented this risk would be mitigated by ensuring published documents and guidance are amended to reflect the changes to the regulation of further education colleges.

The public sector equality duty

23. We have had due regard to the public sector equality duty set out in section 149 of the Equality Act 2010.⁵³ This requires the OfS to have due regard to the need to eliminate unlawful discrimination, foster good relations between groups and advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
24. We consider that the proposals in this consultation may particularly impact current and prospective students of unregistered providers that may in future seek to register with the OfS. In general, we have sought to design our proposed regulatory requirements to have a positive impact on all students, including students with protected characteristics. We consider that these proposals may increase the range of positive higher education choices for students by enabling a streamlined registration process for further education colleges without DAPs, supporting timely access to LLE funding.
25. This will have positive impacts for some groups of students with protected characteristics because we know that at a national level these students may not have equal opportunity to access a sufficiently wide variety of higher education course types. They may also be less likely to succeed on courses where the course type or delivery style is not suited to their situation.⁵⁴
26. This consultation gives stakeholders an opportunity to inform the development of our proposals. Through this consultation we are seeking views on any unintended consequences of our proposals, for example for particular types of providers or groups of students, or for individuals on the basis of their protected characteristics. Responses to this consultation will inform our assessment of the impact of our proposals on different groups.

Guidance issued by the Secretary of State

27. We have had regard to guidance issued to the OfS by the Secretary of State under section 2(3) of HERA,⁵⁵ including the following guidance:
- a. Guidance to the OfS from the Secretary of State for Education on the allocation of Strategic Priorities Grant capital funding for the 2025-26 (issued May 2025).

⁵³ See [Equality Act 2010 - Section 149](#).

⁵⁴ See [Risk 5: Limited choice of course type and delivery mode](#).

⁵⁵ See [Higher Education and Research Act 2017 - Section 2](#).

- b. Guidance to the OfS on the Higher Education Strategic Priorities Grant for the 2023-24 Financial Year (issued March 2023).
- c. Statutory guidance to the OfS on freedom of speech commencement (issued June 2025).⁵⁶

28. The guidance issued by the Secretary of State to the OfS in May 2025 sets out that ‘our commitment that opportunity is available for all remains unwavering, and we will achieve this by addressing gaps in access and outcomes faced by underrepresented groups’. The consultation proposes to disapply condition A2 (access and participation statement) for all further education colleges because as a prerequisite of receiving public funding, further education colleges must set objectives on how they will meet the local needs duty. This ensures that gaps in access and outcomes continue to be addressed through existing, evidence-based mechanisms, rather than duplicative reporting.
29. The same guidance sets out that ‘we will need an even more determined focus on high impact, evidence-based interventions, as well as innovative approaches to make higher education more accessible’. This consultation supports innovative approaches to regulation by proposing to streamline the registration for further education colleges without DAPs, many of which serve non-traditional and local learners. The proposed approach also supports high-impact, evidence-based regulation by focusing OfS resources where they are most needed, while avoiding unnecessary duplication.
30. We have had regard to the statutory guidance issued by the Secretary of State in June 2025 concerning the commencement of freedom of speech provisions. This guidance emphasises the importance of upholding freedom of speech and academic freedom within higher education.
31. As explained above at paragraph 55, the consequence of disapplying ongoing conditions E1 and E2 for further education colleges without DAPs and that do not intend to seek DAPs, would be that the OfS would not have, in respect of this category of further education colleges, the regulatory tools of ongoing condition E1 and E2, to regulate freedom of speech and academic freedom. However, the OfS would retain the ability to regulate these matters via a specific ongoing condition of registration as necessary and appropriate.
32. In addition, as explained above, statutory duties in respect of freedom of speech and academic freedom, applicable to all registered higher education providers, came into force on 1 August 2025. Similarly, if the OfS has concerns that any provider, including further education colleges that do not have, and have not applied for, DAPs, are not discharging these statutory duties, the OfS is able to impose a specific ongoing condition of registration under section 6 of HERA.
33. Further, as also explained above, we note that it is possible that section 6 of HEFSA, if brought into force in its current form, will require the OfS to put in place initial and ongoing conditions of registration pertaining to freedom of speech and academic freedom, which would be applicable to all registered higher education providers, including further education colleges. Alternatively, if section 6 of HEFSA is brought into force in line with the government’s June 2025 proposed amendments, this will give the OfS a power in this regard. In any event, these conditions (if subsequently put in place either via an OfS duty or power) will provide the OfS with new,

⁵⁶ All statutory guidance cited is available at [Guidance from government](#).

further (or revised) regulatory tools by which to regulate these issues for all registered providers including further education colleges in the future.

The Regulators' Code

34. We have had regard to the Regulators' Code, which sets out principles for how regulators should engage with those they regulate.⁵⁷ Section 1 of the code is particularly relevant and sets out that regulators should carry out their activities in a way that supports compliance and growth. Paragraph 1.1 states that 'regulators should avoid imposing unnecessary regulatory burdens...and assess whether similar outcomes could be achieved by less burdensome means.' The proposals in this consultation to disapply certain conditions of registration for further education colleges without DAPs (where robust DfE oversight already exists) reduces duplication and supports these providers to comply more easily, while still protecting students and public funds.
35. Paragraph 2.1 sets out that 'regulators should have mechanisms in place to consult those they regulate...' This document is a formal consultation with stakeholders to gather views on proposed changes. It includes clear instructions for submitting responses and acknowledges sector feedback from previous engagement.
36. Paragraph 3.1 sets out that 'regulators should ensure that the allocation of their regulatory efforts is proportionate to the risk presented...' The proposals in this consultation are explicitly risk-based, targeting regulatory effort where OfS oversight adds the most value. Further education colleges without DAPs are considered lower risk due to existing DfE regulation, and the OfS retains powers to intervene where risks arise.

⁵⁷ See [Regulators' Code - GOV.UK](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/612227/Regulators_Code.pdf).

Annex D: List of consultation questions

Question 1

Do you agree with the proposal to disapply initial condition A2 (access and participation statement) for further education colleges applying for OfS registration? Please provide a reason for your answer.

Question 2

Do you agree with the proposal to disapply ongoing condition A2 (access and participation statement) for all registered further education colleges? Please provide a reason for your answer.

Question 3

Do you agree with the proposal to disapply initial condition D (financial viability and sustainability) for further education colleges applying for OfS registration that are not seeking DAPs? Please provide a reason for your answer.

Question 4

Do you agree with the proposal to disapply ongoing condition D (financial viability and sustainability) for registered further education colleges without DAPs (and have not applied for DAPs)? Please provide a reason for your answer.

Question 5

Do you agree with the proposal to disapply initial conditions E7 (governing documents and business plans), E8 (fraud and inappropriate use of public funds) and E9 (individuals) for further education colleges applying for OfS registration that are not seeking DAPs? Please provide a reason for your answer.

Question 6

Do you agree with the proposal to disapply ongoing conditions E1 (public interest governance) and E2 (management and governance) for registered further education colleges without DAPs (and have not applied for DAPs)? Please provide a reason for your answer.

Question 7

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

Question 8

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

Question 9

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



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