

Office for  
Students



# Regulatory Advice 2: Registration of current providers for 2019-20

Guidance for providers about  
the application process

Reference **OfS 2018.04**

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## **Regulatory Advice 2: Registration of current providers for 2019-20: Guidance for providers about the application process**

### **Introduction**

1. This regulatory advice sets out guidance for existing providers of higher education in England that want to register with the Office for Students (OfS). It applies to you if you are:
  - a. A higher education institution funded by the Higher Education Funding Council for England (HEFCE) during 2017-18, or that will be funded by the OfS in 2018-19.
  - b. A further education college or a sixth form college funded by HEFCE in 2017-18, or that will be directly funded by the OfS in 2018-19.
  - c. A provider designated for student support by the Secretary of State and regulated by the Department for Education (DfE) in 2018-19 (sometimes referred to as an 'alternative provider').
2. The guidance is intended to help you to:
  - a. Check whether you are eligible to register with the OfS.
  - b. Decide which benefits you want to access and so which category of the OfS Register you want to join.
  - c. Compile and submit the evidence needed to support your application.
  - d. Understand how the OfS will assess your application and tell you the outcome of the registration process.
3. This guidance should be read in conjunction with the OfS's regulatory framework (OfS 2018.01) which sets out in full the approach that we will take to the registration and regulation of providers. If there are any inconsistencies between the regulatory framework and this document then the regulatory framework will prevail.
4. If you are a new provider not currently funded or regulated by HEFCE, or regulated by the DfE, guidance on the registration process as it will apply for you has been published in separate regulatory advice (OfS 2018.05).

# PART A: What do I need to do to register?

If you want to register with the OfS you need to:

<b>1</b>	<b>Check that you are eligible to register</b> See section 1: Am I eligible to register with the OfS?
<b>2</b>	<b>Decide which benefits you want to access</b> See section 2: Which benefits do I want to access?
<b>3</b>	<b>Decide when you need to apply</b> See section 3: When should I apply?
<b>4</b>	<b>Compile the evidence required for your application</b> See section 4: What evidence do I need to provide? We need you to provide: <ul style="list-style-type: none"><li>• your access and participation plan or access and participation statement</li><li>• information about your approach to consumer protection law</li><li>• your student protection plan</li><li>• information about your management and governance arrangements.</li></ul>
<b>5</b>	<b>Complete an application form</b> See section 5: How do I complete an application form? We will provide you with an application form that contains the information that we already hold about you. We need you to check this information and fill in any gaps.
<b>6</b>	<b>Submit your application form and the evidence required for your application</b> See section 6: How do I submit my application? You will be able to submit your application from Tuesday 3 April 2018.

# Section 1: Am I eligible to register with the OfS?

## Why do I need to register with the OfS?

5. You will need to register with the OfS if you want to:
  - a. Be officially recognised as providing higher education in England.
  - b. Access public grant funding from the OfS or from UK Research and Innovation (UKRI) through Research England.
  - c. Access the student support system for eligible undergraduate and postgraduate courses.
  - d. Maintain or make an application to the Home Office to recruit international students with a Tier 4 sponsorship licence.
  - e. Apply for degree awarding powers (DAPs) and/or university title.
6. If you want to access any of the benefits listed above in paragraph 5 and you offer higher education courses directly to students (i.e. you register your own higher education students and receive payment directly from students or directly from the student support system on behalf of your students), you must register in your own right regardless of whether or not:
  - a. You have your own degree awarding powers.
  - b. Your courses are validated by another provider or awarding body.
  - c. You validate another provider's courses.
  - d. You also deliver some courses under a subcontractual agreement (sometimes known as a franchise agreement, where the lead provider is receiving payment from, or on behalf of, students) in addition to the courses you deliver directly to your own students.
  - e. You are delivering some of your own courses through a subcontractual agreement with another delivery partner.

## Do I have to register if I deliver higher education as part of a subcontractual arrangement?

7. If you deliver all of your higher education courses on behalf of another provider under a subcontractual arrangement, you will not normally be required to register in your own right, although you may do so if you wish. Your students will be able to access student support due to the registration of the lead provider.
8. However, if you hold a Tier 4 sponsorship licence, or are included as part of another higher education provider's licence, you will need to register separately to comply with the Home Office requirement that all individual sites must have separate educational oversight.
9. If you deliver higher education through a subcontractual arrangement, we will use evidence from your lead provider(s) to assess whether you satisfy some of the ongoing conditions of registration.
10. A subcontractual arrangement is where a course is made available by one provider (the lead provider) with some or all of the teaching or higher education provision, subcontracted out to a different provider (the delivery provider).

11. In a subcontractual arrangement, the students studying with the delivery provider remain students of the lead provider. A course is considered to be part of a subcontractual arrangement if:
  - a. There is a written, legally binding agreement in place between you and the lead provider that sets out the conditions of the arrangement.
  - b. The student has a full contractual relationship with the lead provider for the provision of the course.
  - c. Typically, 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.
12. The course will usually have been designed by the lead provider, which will impose its own requirements for teaching and assessment. The lead provider has full contractual responsibility to the student for the provision of educational services, even though its staff are not teaching (all of) the course or providing all of the educational services. Usually, the lead provider will also be the awarding body for the course qualification, but exceptionally this may be a third party<sup>1</sup>.
13. This does not include informal arrangements that are not governed by contracts between providers, such as those that might exist for shared teaching between constituent parts of the University of London.

#### **Do I have to register if I am a School-Centred Initial Teacher Training provider?**

14. If you are a School-Centred Initial Teacher Training (SCITT) provider offering Initial Teacher Training (ITT) courses you do not have to register with the OfS to enable your trainees to access the student support system. You will continue to be regulated by the Department for Education, and will be required to comply with the criteria for charging fees. SCITTs and other 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.

#### **Do I have to register if I only want my students to be able to access the Disabled Students' Allowance?**

15. If you do not teach any courses that are eligible for student support but want your eligible students to be able to access the Disabled Students' Allowance you will need to register with the OfS. However, some of the ongoing conditions of registration will not be applied to you.

#### **Am I eligible for registration?**

16. You can only register with the OfS if you are, or intend to become, an English higher education provider. We will consider three elements to determine whether an entity is an English higher education provider:
  - a. It provides 'higher education'.

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<sup>1</sup> The usual exception here is apprenticeships, where a further education college may be in the lead (determined by Education and Skills Funding Agency/Institute for Apprenticeships) but with delivery of a higher education qualification subcontracted to a higher education provider that awards the qualification on successful completion.

b. Its activities are 'principally carried on in England'.

c. It is an 'institution'.

17. More information about each of these elements is provided in Annex A.

## Section 2: Which benefits do I want to access?

18. The benefits attached to the different categories of the OfS Register are as follows:

	You need to register in the <b>Approved (fee cap)</b> category if you want these benefits:	You need to register in the <b>Approved</b> category if you want these benefits:
Official recognition as a provider of higher education in England	Yes	Yes
Eligibility for OfS public grant funding	Yes	No
Eligibility for UKRI public grant funding provided by Research England	Yes	No
Eligibility for Research Council funding	Yes – automatic eligibility	Yes – via a separate UKRI eligibility process
Eligibility for student support funding and fee limits	<p>With an approved access and participation plan, may charge fees up to the higher amount for eligible undergraduate and postgraduate initial teacher training courses.</p> <p>With an access and participation statement, may charge fees up to the basic amount for eligible undergraduate courses and postgraduate initial teacher training courses.</p> <p>Eligible undergraduate students on eligible courses are able to access student fee loan support up to these fee levels.</p> <p>Eligible postgraduate students are able to access student support.</p> <p>Eligible students can access Disabled Students' Allowance.</p>	<p>May charge uncapped fees and, for eligible undergraduate and postgraduate initial teacher training courses, eligible students are able to access student support up to the basic fee level.</p> <p>Eligible postgraduate students are able to access student support.</p> <p>Eligible students can access Disabled Students' Allowance.</p>
Eligibility to apply for Tier 4 sponsorship licence (subject to Home Office rules)	Yes	Yes
Eligibility to apply for degree awarding powers and/or university title	Yes	Yes

19. We will ask you to tell us on your application form which category of the Register you are applying to join and, if you are applying to the Approved (fee cap) category, whether you intend to charge fees above the basic amount. The basic and higher fee levels that you can charge are different depending on whether you have a Teaching Excellence and Student Outcomes Framework (TEF) award. These are set out in the table below.



	Basic fee amount (£)		Higher fee amount (£)	
	Providers without a TEF award	Providers with a TEF award <sup>2</sup>	Providers without a TEF award	Providers with a TEF award
Full-time students	6,000	6,165	9,000	9,250
Part-time students	4,500	4,625	6,750	6,935
Erasmus+/study year abroad	900	920	1,350	1,385
Sandwich placement year	1,200	1,230	1,800	1,850

20. You will also be able to indicate whether you want to apply for degree awarding powers once you have a decision about registration. Separate guidance about the process for applying for degree awarding powers will be published in the spring of 2018. When we tell you our decision about your application for registration we will also tell you whether your application for DAPs can proceed.

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<sup>2</sup> This includes provisional TEF awards.

## Section 3: When should I apply?

21. Your application for registration relates to the students you will recruit for the 2019-20 academic year (i.e. students beginning their studies between 1 August 2019 and 31 July 2020).
22. You can apply for registration at any time from Tuesday 3 April 2018.
23. You should plan the timing of your application to fit with your own student recruitment cycle to ensure that you can receive a registration decision in time to communicate with applicants about fee levels (where these will be subject to a fee limit) and the student support that will be available. You should be clear in your communication with applicants that fee levels and the availability of student support and fee levels (where these will be subject to a fee limit) are subject to a decision about registration.
24. If you are applying to receive public grant funding for the first time from 1 August 2019 you will also need to apply by a date that will allow us to calculate funding allocations.

### Early student recruitment cycles

25. If students have to apply for all, or some, of your courses starting in 2019-20 by the early UCAS deadline in October 2018, or if they directly apply to you at this time (normally this applies if you offer medical, dentistry, veterinary or conservatoire provision) you should apply for registration by **Monday 30 April 2018**. We will let you know if we think this application date applies to you but you will need to make sure you apply in good time.
26. If you apply by this date you will receive a registration decision and, if successful, be listed on the OfS's Register by mid-July 2018.

### Standard student recruitment cycles

27. If you don't have any courses with early application dates and students will apply for your courses starting in 2019-20 by the standard UCAS deadline in January 2019, or they apply to you directly at this time or later, then you should apply by **Wednesday 23 May 2018**. If you apply by this date you will receive a registration decision and, if successful, be listed on the OfS's Register by mid-September 2018.

### Communicating with your applicants

28. You must take account of guidance published by the Competition and Markets Authority (CMA) if you are communicating with applicants before you have a registration decision. We suggest that you use the following or similar wording:

'For students to be eligible for funding from Student Finance England, they must be studying on an eligible course at a provider registered with the Office for Students (OfS). The OfS is the new independent regulator for higher education in England and all higher education providers need to register with the OfS for their students to be eligible for student support in the 2019-20 academic year. The OfS will start publishing providers on its Register from July 2018. We have made an application to register and expect a decision by [July/September] 2018. No provider will be able to confirm whether student support is available until it has a decision from the OfS. Visit [www.officeforstudents.org.uk](http://www.officeforstudents.org.uk) for more information.'

## Applications for the Approved (fee cap) category

29. Regardless of when your students make applications to you, if you are applying to the Approved (fee cap) category to access public grant funding for the first time then you will need to apply by **Friday 31 August 2018** at the latest. This is to ensure we can collect data from you in time for us to calculate funding allocations for 2019-20.
30. Applications for registration after this date will still be assessed, and if you are successful you will be registered but you might not be included in funding allocations until 2020-21.
31. If you apply for registration in the Approved (fee cap) category and do not meet the additional requirements for that category but do satisfy the initial conditions of registration for the Approved category you can choose to be registered as an Approved provider.

## What happens if I don't apply by those dates?

32. These are not absolute deadlines. If you apply after these dates we will still assess your application but a later application will result in a later decision and date at which, if successful, you will be listed on the OfS's Register.
33. The table below sets out the suggested applications dates:

Apply at any time but by:	If:	Receive decision by:
Monday 30 April 2018	You have an early student recruitment cycle	Mid-July 2018
Wednesday 23 May 2018	You have a standard student recruitment cycle	Mid-September 2018
Friday 31 August 2018	You want to receive public grant funding for the first time in 2019-20	Mid-November 2018

## Tier 4 sponsorship

34. The Home Office will provide further information about transitional arrangements for 2018-19 in due course. In the meantime, if your educational oversight is due for renewal you should follow current guidance<sup>3</sup>. The requirements for Tier 4 sponsorship remain a matter for the Home Office.

## What should I do if I am expecting to merge with another provider?

35. If you are expecting to merge with another provider this will have implications for your application to register. We expect that this will generally relate to further education colleges. The approach you take to applying for registration will depend on when your merger is due to take place and when you want to be able to communicate with applicants. Your options are:
  - a. Wait until the merger has taken place and apply to register once it is complete.
  - b. You, and the provider you are due to merge with, register separately and then the lead provider reports the merger once it has completed. This means that both providers would have access to the benefits of registration if the merger did not proceed or was delayed.

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<sup>3</sup> See <https://www.gov.uk/government/publications/sponsor-a-tier-4-student-guidance-for-educators>.

- c. The lead provider registers and reports the merger once it has taken place. This option would mean that the provider due to dissolve would not be able to access the benefits of registration if for any reason the merger did not proceed or was delayed.
36. Options b and c would mean that we would need to reassess some of the ongoing conditions of registration that were imposed during the initial registration process.

### **What happens if I don't apply to register?**

37. If you do not register, any new students you recruit for 2019-20 will not be able to access the student support system. If you are eligible to receive public grant funding this would also end on 31 July 2019. You would no longer be eligible to hold a Tier 4 sponsorship licence once your current licence expires and you would not be officially recognised as part of the English higher education sector.
38. If you currently hold degree awarding powers or university college or university title, we may review your suitability to hold these if you choose not to register.
39. If you decide not to register there will be arrangements to ensure that your current students can continue to access the student support system until they have completed their studies, provided that you meet the conditions we set using the powers available to us, or to DfE, under the previous regulatory system. You will be able to continue to recruit students but they would not have access to the student support system.

## Section 4: What evidence do I need to provide?

40. To be registered, you must demonstrate that you satisfy the initial conditions of registration that apply to the category of the Register that you are applying to join. A full list of the initial conditions of registration for each category is provided in Annex B.
41. We will use evidence previously collected or generated by HEFCE, or by DfE, to decide whether you satisfy some of the initial conditions of registration. In four areas we need you to submit new evidence as set out in the table below.

	You need to provide the following new evidence if you want to register in the <b>Approved (fee cap)</b> category:	You need to provide the following new evidence if you want to register in the <b>Approved</b> category:
Access and participation conditions A1 or A2	An access and participation plan if you want to charge fees above the basic amount  An access and participation statement if you want to charge fees up to the basic amount	An access and participation statement
Guidance on consumer protection law condition C1	A self-assessment	A self-assessment
Student protection plan condition C3	A student protection plan	A student protection plan
Management and governance conditions E1 and E2	A self-assessment	A self-assessment

42. The sections that follow provide more detailed guidance about each of these evidence requirements.

## Access and participation conditions A1 or A2

Condition A1	An Approved (fee cap) provider intending to charge fees above the basic amount to qualifying persons on qualifying courses must: <ul style="list-style-type: none"><li>i. Have in force an access and participation plan approved by the OfS in accordance with the Higher Education and Research Act 2017 (HERA).</li><li>ii. Take all reasonable steps to comply with the provisions of the plan.</li></ul>
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: <ul style="list-style-type: none"><li>i. Publish an access and participation statement.</li><li>ii. Update and re-publish this statement on an annual basis.</li></ul>

### Access and participation plans

43. You will need an approved access and participation plan if you want your students to be able to access student loan funding up to the higher amount. Access and participation plans perform a similar function to the access agreements that were previously agreed with the Director of Fair Access of Higher Education.
44. If you are a provider delivering higher education through a subcontractual arrangement you do not need to produce your own access and participation plan but your lead provider must name you in its own plan to ensure that the condition that applies to you can be satisfied.
45. Separate guidance about how to produce an access and participation plan has been published by the Director for Fair Access and Participation (OfS 2018.03).
46. Once you have produced your access and participation plan you will need to submit it with your application form and the other evidence set out in this section.

### Access and participation statements

47. An 'access and participation statement' is a statement setting out your commitment to supporting access and participation in higher education by students from disadvantaged backgrounds and under-represented groups.
48. By 'access and participation' we mean the measures that you put in place to ensure equality of opportunity in:
  - a. Applications from future students to your provider, and to other higher education providers.
  - b. The student success and progression outcomes for your current students.
49. Your statement should be informed by the context in which you operate and the characteristics and needs of your students. It is for you to determine the content of the statement, but the Director for Fair Access and Participation has published advice for providers on good practice in relation to access and participation statements (OfS 2018.07).

50. Unlike an access and participation plan, the content and ambition of a statement will not be approved by the Director for Fair Access and Participation; however, the statement does need to be published on your website.
51. If you participated in the TEF and produced an access and participation statement for this you can use this as evidence for our registration process.
52. Once you have produced your access and participation statement you will need to publish it on your website and submit it with your application form and the other evidence set out in this section.

### **Postgraduate only providers**

53. If you do not teach students on courses subject to the regulated undergraduate tuition fee regime you do not need to produce an access and participation plan or statement.

### **Guidance on consumer protection law condition C1**

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.
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54. To register you will need to submit a self-assessment of how you have given due regard to relevant guidance about how to comply with consumer protection law. Our assessment of this condition is not a judgement of whether you are compliant with consumer protection law – we are assessing whether you use relevant guidance appropriately.
55. As we assess your self-assessment we will also take into account any other evidence about your approach to consumer protection law that was collected or produced by HEFCE, or by DfE.
56. By 'self-assessment' we mean your own evaluation of how your organisation meets the condition, why you have reached this conclusion and the evidence you are using to make this assessment. A suggested template is provided at Annex C.
57. By 'relevant guidance' we mean the CMA's publication 'UK higher education providers: Advice on consumer protection law'<sup>4</sup>. If you have used guidance other than that published by the CMA, you will need to demonstrate how this is appropriate.
58. You may find it helpful to take account of the compliance checklists<sup>5</sup> in the CMA guidance when producing your self-assessment. Completion of the checklists does not in itself constitute a self-assessment and these should not need be submitted as evidence.

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<sup>4</sup> See <https://www.gov.uk/government/publications/higher-education-consumer-law-advice-for-providers>.

<sup>5</sup> Checklists can be found in Annex A, pages 55 to 59, of <https://www.gov.uk/government/publications/higher-education-consumer-law-advice-for-providers>.

### Student protection plan condition C3

Condition C3	<p>The provider must:</p> <ol style="list-style-type: none"><li>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.</li><li>ii. Take all reasonable steps to implement the provisions of the plan if the events set out in the plan take place.</li><li>iii. Inform the OfS of events, except for the closure of an individual course, that require the implementation of the provisions of the plan.</li></ol>
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59. To register you will need to produce and submit a student protection plan (SPP) as part of your application. We will approve this as part of the registration process and you will need to publish it on your website.
60. Your SPP is intended to provide assurance to your current and future students, and to us, that you have in place appropriate arrangements to protect the quality and continuation of study for your students. It should be written with students in mind as the audience and should set out your approach to protecting their interests transparently and clearly.
61. Your SPP must be tailored to your specific circumstances and be based on your assessment of the extent of the risks to the continuation of study for your students. It should not take a 'one size fits all' approach, recognising that the risks to continuation of study and the impact of changes will be different for students with different needs, characteristics and circumstances. You should have regard as a minimum to the possible different needs of students sharing particular protected characteristics (as defined in the Equality Act 2010) when preparing your SPP. It should include the actions you are taking to mitigate those risks.
62. A template is provided at Annex D. Your plan will need to consist of the following four elements:

**Your assessment of the range of risks to the continuation of study for your students, how these risks may differ based on your students' needs, characteristics and circumstances, and the likelihood that those risks will crystallise**

63. You should set out the reasons for your assessment and, in doing so, we would expect you to consider the likelihood of non-continuation of study for your students where:
  - a. The provider as a whole is no longer able to operate, or has decided to cease operating.
  - b. The provider has lost the power to award degrees or has lost validation for one or more of its courses.
  - c. The provider is, or expects to be, operating with probationary degree awarding powers.
  - d. One or more of the locations at which you deliver courses to students is no longer available, particularly if you are considering closure or significant change to a location.
  - e. You are no longer able to deliver courses to your students in one or more subject areas and/or departments.



- f. You are no longer able to deliver one or more courses to your students, particularly if you are considering course closures in the next three years.
  - g. You are no longer able to deliver material components of one or more courses, particularly if there are areas of particular vulnerability, such as single person dependencies for teaching.
  - h. You are no longer able to deliver one or more modes of study to your students, particularly if you are considering withdrawing a mode of study.
  - i. You are no longer able to recruit or teach a particular type of student, such as international students.
64. Your assessment may demonstrate that risk in some of these areas is not sufficiently likely to crystallise to require specific mitigation. For example, your financial performance and business continuity plans may mean that your assessment is that the provider as a whole is unlikely to be unable to operate.

**The measures that you have put in place to mitigate those risks that you consider to be reasonably likely to crystallise**

65. Your SPP will need to acknowledge that a single measure to allow students to continue their studies might not be uniformly appropriate for each student in each instance. Students from different backgrounds will have different needs; for some students alternative courses will be acceptable, while others will wish to transfer. Some students will need tailored support whatever measure is adopted.
66. Examples of measures to preserve continuation of study for your students include, but are not limited to:
- a. A commitment that you will ‘teach out’ all of your students currently registered on a course. This might be an appropriate approach if you decide for strategic reasons to discontinue a course, or a subject area, or a department, and you have the financial resources to teach students through to the end of their course. Teach out might be a less appropriate approach where you, or we, have concerns about standards or the quality of the academic experience on a course.
  - b. A commitment by another provider (normally your validating partner, but possibly one or more other providers in a nearby location) to teach out all of your students currently registered on a course. We might ask to see confirmation of any such commitments from other providers if we consider that the risk of non-continuation of study for your students is likely to crystallise.
  - c. A commitment that you will offer other, alternative, courses from your portfolio to affected students. This might not be an appropriate approach for students who wish to study the particular course or subject that is being discontinued. In such circumstances you would also need to be mindful of CMA guidance in seeking to implement such a change of course.
  - d. A commitment that you will make every effort to support individual students to find an alternative course at another provider. Support for such ‘transfer of study’ is likely to include, but not be limited to, certification of credit or a record of academic achievement to facilitate admission to the receiving provider.
67. We would expect your SPP to set out the measures you will put in place to preserve continuation of study for students on courses where you are a sole or rare supplier, or where your provision

might be considered 'niche'. Your student protection plan should also cover students taught by your delivery partners in subcontractual arrangements.

68. If you are a further education college or a sixth form college your SPP does not need to include measures to preserve continuation of study for students in the event of whole provider closure because your principal regulator, the Education and Skills Funding Agency (ESFA), will provide us with assurance about this.

### **Information about the policy you have in place to refund tuition fees and other costs to your students in the event that you are no longer able to preserve continuation of study**

69. All providers are required to have a refund and compensation policy. There will be circumstances in which it is not possible to preserve continuation of study for one or more of your students and, in these circumstances, you will need to refund a student's fees and other relevant costs. Your refund and compensation policy should linked to, or included in, your SPP and should make provision for:
- a. Refunds for students in receipt of a tuition fee loan from the Student Loans Company.
  - b. Refunds for students who pay their own tuition fees.
  - c. Refunds for students whose tuition fees are paid by a sponsor.
  - d. The payment of additional travel costs for students affected by a change in the location of their course or funding to offset additional costs incurred by relocation (for example, students with caring responsibilities whose childcare costs increase significantly, perhaps by transferring from a provider with a subsidised crèche to one without).
  - e. Commitments to honour student bursaries.
70. Your refund and compensation policy should also include provision for the payment of compensation to students to cover, for example:
- a. Maintenance costs and lost time where it is not possible to preserve continuation of study.
  - b. Tuition and maintenance costs where students have to transfer courses or provider.
71. Your SPP should set out how you will ensure that you can deliver the financial implications of your refund and compensation policy. Your assessment may demonstrate that you have adequate cash reserves to underwrite likely costs. Where this is not the case, you may need to take out insurance, or to establish a 'student refund and compensation' fund to cover likely costs. We understand that you may not have such arrangements in place when you apply for registration so where your SPP indicates that they could be necessary we may apply an ongoing condition of registration requiring these arrangements to be in place by 31 July 2019.

### **Information about how you will communicate with students about your student protection plan**

72. Your SPP will need to contain information about the arrangements you have put in place to communicate the provisions of your plan to current and future students. You should indicate in your plan how you will share it with, and explain it to, current and future students, including by:
- publication on your website

- inclusion with the material you provide to applicants when you make an offer to study on a course
- drawing the attention of current students to your plan on a regular basis.

73. You should also indicate in your plan:

a. How you will share it with and explain it to your staff, including by:

- publication on staff intranet pages
- inclusion in your policy and process documents for course changes and closure
- inclusion in relevant staff training activities.

b. How you will work with your current students in the development of your plan to ensure that it is a living document that is reviewed and updated appropriately as your risk assessment changes. You should indicate in your plan:

- how often it will be reviewed
- how it will be reviewed
- how your students will be involved in its review.

c. The arrangements you will put in place to communicate with affected students should the plan need to be implemented. You should indicate in your plan how students will be informed and involved when you need to implement any of the provisions of your plan, including:

- a minimum number of days' notice to be given to students in the event of course, campus or planned provider closure
- the range of collective and individual communication mechanisms you will use to ensure that all students, regardless of their circumstances, are able to actively engage with discussions about the implementation of your plan
- the availability of independent advice for students
- how students may make a complaint about the way you are implementing your plan.

### Management and governance conditions E1 and E2

Condition E1	The provider's governing documents must uphold the public interest governance principles that are applicable to the provider.
Condition E2	<p>The provider must have in place adequate and effective management and governance arrangements to:</p> <ol style="list-style-type: none"> <li>i. Operate in accordance with its governing documents.</li> <li>ii. Deliver, in practice, the public interest governance principles that are applicable to it.</li> <li>iii. Provide and fully deliver the higher education courses advertised.</li> <li>iv. Continue to comply with all conditions of its registration.</li> </ol>

74. You will need to demonstrate, through a self-assessment, that your governing documents uphold the public interest governance principles and that you have adequate and effective management and governance arrangements in place. You will also need to demonstrate that you are owned and managed by 'fit and proper' persons.
75. As we assess your self-assessment we will also take into account any other evidence about the adequacy and effectiveness of your management and governance arrangements that was previously collected or produced by HEFCE or by DfE.
76. We recognise that providers have different levels of complexity (based on factors such as legal form, group structure, partnerships, locations, size etc.) and we do not expect to see a single model of management and governance arrangements that is appropriate for all providers. In particular for small providers it is likely that the governing body, or its equivalent (which might be the senior management team), might undertake all of the functions that in a larger provider would be delegated to committees. However, arrangements that may be appropriate for small providers might not be appropriate for larger or more complex providers, or those with degree awarding powers or university title.

**Your self-assessment of how your governing documents uphold the public interest governance principles and the extent to which your management and governance arrangements are adequate and effective**

77. By '**governing documents**' we mean the documents that describe any of your objectives or values, your powers, who has a role in decision making within your provider, how you take decisions on how to carry out your functions and how you monitor the exercise of those functions.
78. Depending on your legal form, your governing documents may include a Royal Charter, statutes and ordinances, memorandum and articles of association, or instruments of government and/or a trust deed or deeds.
79. Unless you are a very small provider, governing documents are also likely to include documents such as schemes of delegation, terms of reference of committees to which significant functions have been delegated, 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 your operation. You do not need to supply all of these documents, unless we request them, but they should be described in your self-assessment.
80. The public interest governance principles are set out in Annex E.
81. By '**management and governance arrangements**' we mean how your organisation implements its governing documents in practice.
82. In assessing whether arrangements are '**adequate**', we will seek to determine if the procedures in place are designed appropriately, and in assessing whether the arrangements are '**effective**', we will consider whether these are operating properly.
83. By '**self-assessment**' we mean your own evaluation of how your organisation meets the conditions, how you have reached this conclusion, and the evidence you are using to make this assessment.
84. You do not need to submit any supporting documents with your self-assessment, but should make reference to the evidence you have used to reach your own judgement. If we have any concerns that the conditions may not be satisfied, or if you want to apply for degree awarding

powers after you have received your decision about registration, then we may ask to see supporting documents.

85. Your self-assessment should include:
- a. An assessment of how your governing documents uphold the public interest governance principles that are relevant to you and the category of registration you are seeking.
  - b. A brief description of your management and governance arrangements and why you think these are appropriate for the size and complexity of your organisation.
  - c. An assessment of the extent to which management and governance arrangements are adequate and effective.
86. If you are a further education college or a sixth form college your self-assessment only needs to address the management and governance arrangements for your higher education provision.
87. If you are a higher education institution currently regulated by HEFCE, we think that most of this information will be set out in your statement of corporate governance in your published financial statements.
88. If you use a particular governance code and this code is, in your judgement, consistent with the public interest governance principles, your self-assessment could refer to how you ensure compliance with this code.
89. A suggested template for your self-assessment is provided at:
- Annex F if you are currently have courses designated by the Secretary of State
  - Annex G if you are currently a higher education institution funded by HEFCE
  - Annex H if you are a further education college or sixth form college.
90. If we have any concerns about the appropriateness, adequacy or effectiveness of your management and governance arrangements we may carry out an onsite review to confirm that you satisfy the initial conditions of registration. We may also carry out such a review if you are also applying for degree awarding powers.

#### **Additional requirements for providers applying to the Approved (fee cap) category**

91. If you are applying for registration in the Approved (fee cap) category you will need to demonstrate in your self-assessment that you will be able to meet two additional public interest governance principles. This is to recognise that you will be receiving taxpayers' money, and that you are required to have structures and processes in place to ensure that there is appropriate accountability to Parliament for these funds. The additional principles are in line with those set out in HM Treasury's 'Managing public money' and are designed to ensure sound and open decision-making, regularity, propriety and value for money.

## Definitions

### Regularity

By regularity we mean compliance with the relevant legislation (including State Aid) and funds are used only for the purpose for which they are given, and in line with any conditions attached.

### Propriety

By propriety we mean meeting high standards of public conduct, including the relevant parliamentary expectations, especially transparency.

### Value for money

By value for money we mean 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 funding received.

92. If you are applying to receive public grant funding for the first time then your self-assessment will need to set out the arrangements that are already in place that meet these additional requirements or the actions that you will need to take to introduce the necessary arrangements. You must be able to demonstrate that you meet all requirements by 1 August 2019.
93. To meet these two additional public interest governance principles, you will need to point to evidence in your self-assessment that:
- a. You have, or will have, internal audit arrangements, including an audit committee, to provide an annual opinion on the adequacy and effectiveness of arrangements:
    - i. To ensure that funds are used for purpose.
    - ii. For securing value for money.
  - b. Your audited financial statements include, or will include:
    - i. A 'Statement of corporate governance' that sets out your corporate governance arrangements.
    - ii. A 'Statement of internal control' that sets out the adequacy and effectiveness of your arrangement for internal control, including of your management and governance arrangements.
  - c. You publish, or will publish, your audited financial statements.
  - d. If you are a charity, your trustees' personal behaviour is in accordance with your ethical framework and that this framework builds on the 'Nolan Principles of Public Life'<sup>6</sup>.

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<sup>6</sup> See <https://www.gov.uk/government/publications/the-7-principles-of-public-life>.

- e. If you are not a charity, you have a policy framework on ethics which has regard to those 'Nolan Principles of Public Life' that are relevant to a profit-making organisation.
94. For small providers, with low complexity, we recognise that an internal audit function and an audit committee might not be appropriate. Once registered, this requirement could therefore be met by a 'Statement of corporate governance' in your audited financial statements that sets out your arrangements for control and risk management, and an opinion by your external auditors that you use the funds for the purposes given.
95. An indication of what we would consider to be a small and low complexity provider is a provider that is each of the following:
- a. A single entity with simple control and ownership structures.
  - b. Having activity based only in England.
  - c. Delivering only higher education activity.
  - d. Of the following size:
    - < £3 million turnover
    - < 500 FTE students
    - < £1.5 million total net assets.

**Are my owners and managers 'fit and proper' persons?**

96. To satisfy the management and governance conditions you need to demonstrate that your organisation is owned (where relevant) and managed by 'fit and proper' persons. The purpose of the 'fit and proper' test is to ensure that the ownership and management arrangements for a provider are appropriate and do not present a risk to students or to public funds.
97. To assess whether your organisation is owned and managed by 'fit and proper' persons, we will ask you for information on the application form about key individuals including, where relevant:
- a. Your nominated 'accountable officer'.
  - b. The chair of your governing body.
  - c. Your main shareholders.
  - d. Your directors or trustees.
98. We will also ask you to confirm to us that every individual whose details you have passed to us has consented in writing to our holding and processing their personal data for the purpose of our regulation of you, and that you will provide us with a copy of that consent on request.

## **Definitions**

### **Accountable officer**

The accountable officer must be 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 is the officer who reports to the OfS, the designated data body and the designated quality body on behalf of the provider and has the responsibilities set out by the OfS. If you are a further education college or sixth form college this will be the person who acts as the 'accounting officer' for the ESFA.

### **Chair of governing body**

This is the person responsible for leading the governing body, or equivalent, and who has ultimate responsibility for strategic decision making and oversight of the provider.

The term 'governing body' has the meaning given in section 85 of HERA. Broadly, this will be any board of governors of the provider or any person or group of people responsible for the management of the provider/company, or an equivalent controlling body. This might be the board of directors, the trustees of a charity, for example.

We recognise that for very small providers there might be a very small group of people responsible for management and one individual may be both the chair and the accountable officer.

### **Main shareholders**

Your main shareholders are defined as any individual or company shareholders with more than a 20 per cent holding either by value or by voting rights. For entities not limited by shares, the same threshold of 20 per cent of ownership should be applied.

### **Directors**

Your directors are the senior people involved in running the provider, or they could be non-executive directors with responsibility for the oversight of the provider, whether or not they are called 'directors'.

### **Trustees**

Trustees has the meaning given by section 177 of the Charities Act 2011 – trustees are the people who have the general control and management of the administration of a charity.

99. A fit and proper person:
- a. Is of good character.
  - b. Has the qualifications, competence, skills and experience that are necessary for their role.
  - c. 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.



- 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 or have been associated.

100. The following are indicators that a person may not be a fit and proper person:

- a. 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.
- b. Conviction of a criminal offence anywhere in the world<sup>7</sup>.
- c. Subject of any adverse finding in civil proceedings, where relevant, including but not limited to bankruptcy or equivalent proceedings (in the last three years).
- d. Subject of any adverse findings in any disciplinary proceedings by any regulatory authorities or professional bodies.
- e. Involvement in any abuse of the tax systems.
- f. Involvement with any entity that has been refused registration to carry out a trade or has had that registration terminated.
- g. 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.
- h. Dismissal from a position of trust or similar.
- i. 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.).

101. Where one of these indicators does apply to an owner or one of the positions listed in paragraph 97, you must disclose this to us and show evidence that you have investigated and considered the appropriateness of the involvement of the individual or company.

102. We will determine whether the matter:

- a. Is relevant to the individual's role.
- b. Has been appropriately addressed by you.
- c. Affects your application.

103. As we assess whether your owners and managers are 'fit and proper' persons we will take into account any evidence that was collected or produced by HEFCE, or by DfE, as well as the

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<sup>7</sup> 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. We 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.

information contained in your application. If you are part of a wider group structure we may contact you separately to request further information about the owners and managers of any parent companies and/or the ultimate controlling party.

### **Privy Council oversight of governing documents**

104. If you will be subject to Privy Council oversight of some of your governing documents in the academic year 2018-19 (this applies to all higher education institutions currently funded by HEFCE and any provider governed by a Royal Charter), and need to make changes to ensure that they uphold the public interest governance principles, we will be able to consider and agree these changes in draft as part of the registration process. This approach will mean that you do not need to seek Privy Council approval for minor changes during 2018-19.
105. Our definition of 'governing documents' extends beyond the documents that have previously been governed by the Privy Council. This means you will not necessarily have to make changes to your Royal Charter or statutes in order to meet condition E1.
106. If you do need to make changes you will need to submit a draft of the changes you want to make to these governing documents with your application for registration and we will consider and approve these on the condition that the agreed changes will be made to your governing documents when Privy Council oversight ceases on 1 August 2019.

## Section 5: How do I complete an application form?

107. You will be able to access an application form from Tuesday 3 April 2018. Where we already hold some of this information the application form will be prepopulated. We need you to confirm that the information is correct or make amendments where this is necessary. It is important that this information is accurate as it will appear on the OfS Register.

108. This application form will request or ask you to confirm the following information. The fields that will be prepopulated are marked with an asterisk:

The provider's name *	The legal name and trading names of the provider you wish to register.
The category in which you are seeking registration	One of: <ul style="list-style-type: none"> <li>• Approved (fee cap) (and indicating whether you will be charging basic or higher fees or are a postgraduate-only provider).</li> <li>• Approved (and indicating whether you are applying for Tier 4 sponsorship or Disabled Students' Allowance purposes only).</li> </ul>
Whether you are applying for degree awarding powers following a decision on registration	Whether you are applying for degree awarding powers following a decision on registration, the type of powers you wish to apply for and whether this is on a probationary or full authorisation basis
The provider's unique identifier *	Your UKPRN allocated by the UK Register of Learning Providers.
The provider's contact information	The address of your primary place of business.  An email address appropriate for students and members of the public to be able to contact you with any general enquiries.  A telephone number appropriate for students and members of the public to be able to contact you with any general enquiries.
The address of the provider's website	The address of your primary website.
Information about the key individuals who own and/or manage the provider	The name, date of birth and role title of the key individuals who own and manage your provider: <ul style="list-style-type: none"> <li>• Accountable officer.</li> <li>• Chair of governing body or equivalent.</li> <li>• Main shareholders.</li> <li>• Directors or trustees.</li> </ul> <p>If you are part of a wider group structure we may need further information about the ownership and management of any parent companies.</p>
Date that university title was awarded *	If you hold university or university college title we will ask for the date this award was made.

How university title was granted *	If you hold university or university college title we will ask how it was awarded (Charter, or under an Act of Parliament).
Validation	<p>If you have degree awarding powers we will ask whether you validate the degrees at any other provider, and ask you to provide a list of any such arrangements in place at the date of your application.</p> <p>If you do not have your own degree awarding powers we will ask if any of the higher education you offer is validated by a degree awarding body.</p>
Subcontractual arrangements*	If you have entered into any formal subcontractual relationships (also known as 'franchise') with other higher education providers, we will ask you to provide a list of all arrangements in place at date of your application.
Degree awarding powers*	If you hold degree awarding powers, we will ask you to confirm when this award was made and the type of degree awarding powers held. We will ask if the award is indefinite, or limited and if so, for what period.
The provider's legal form*	<p>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 guarantee.</p> <p>Whether the provider is an exempt or registered charity.</p>

## Section 6: How do I submit my application?

109. You will be able to apply to register through an online portal which will open on **Tuesday 3 April 2018**.
110. We will write to you by the end of March providing instructions about how to use the registration portal, including login information and instructions about how to submit your application and supporting evidence.
111. We wrote to you in February 2018 asking for an early indication of the category in which you are likely to register. Based on the information you provided, we will send you a checklist of the evidence that we already hold because it was collected or generated by HEFCE or by DfE. We will also confirm the initial conditions of registration for which you will need to submit new evidence. We will also provide electronic copies of the templates provided in the annexes of this advice document.
112. We will also let you know about the requirements for other categories in case you have changed your mind about your registration.
113. If you are applying in the Approved (fee cap) category and have a current access agreement approved by the Director for Fair Access under the previous regulatory system, we will also provide a prepopulated quantitative template drawing on existing milestone data relating to access and participation. If you have not previously held an access agreement we will give you a blank template. This will need to be submitted as part of your application for registration to satisfy the initial condition of registration on access and participation.
114. As part of your application to register, you will need to complete an application form as set out in Section 4 above. When you log into the registration portal, you will be able to access a partially prepopulated application form which you will need to check and complete. You will also be able to upload the completed templates and documents that you will submit as evidence with your application.
115. We will confirm that we have received your application and tell you the next steps for assessing your application and for reaching a decision.

## **PART B: How will we assess your application to register?**

116. When you have submitted your application to register we will:

<b>1</b>	<b>Check that your application form is complete and that you have provided the evidence required for your application</b>  See section 7: Have you submitted a complete application and are you eligible for registration?
<b>2</b>	<b>Identify the 'institution' to be registered and confirm that it is eligible to register with the OfS</b>  See Section 7: Have you submitted a complete application and are you eligible for registration?
<b>3</b>	<b>Gather together the evidence required to assess your application</b>  See Section 8: What are the evidence requirements for each provider?
<b>4</b>	<b>Assess whether you satisfy the initial conditions of registration and complete a risk assessment</b>  See Sections 8: What are the evidence requirements for each provider?  and Section 9: Do you satisfy the initial conditions of registration and what is the risk that you will breach conditions in future?
<b>5</b>	<b>Tell you the outcome of your application</b>  See Section 10: What is the outcome of your application?
<b>6</b>	<b>Tell you what you need to do to stay registered</b>  See Section 11: What do you need to do to stay registered?

## **Section 7: Have you submitted a complete application and are you eligible for registration?**

117. Once we have received your application we will check that we have all the information we need to complete an assessment. We will contact you as soon as possible after submission if we believe any information is missing from your application.
118. We will draw on existing evidence collected by HEFCE or DfE, publicly available evidence (such as that held by Companies House), and information provided in your application form to identify the 'institution' to be registered and confirm your eligibility as an 'English higher education provider'. We may contact you for further information or clarification.

## Section 8: What are the evidence requirements for each provider?

119. We will gather together the evidence needed to assess whether you satisfy each of the initial conditions of registration as set out in Annex B. This will include the evidence that you have submitted with your application for the following conditions:

- Access and participation condition A1 or A2
- Guidance on consumer protection law condition C1
- Student protection plan condition C3
- Management and governance conditions E1 and E2.

120. We expect you to provide evidence rather than simply asserting that these conditions are satisfied. All of the evidence that you provide must be accurate and up to date. If you provide inaccurate or out of date information our decision may be delayed and we may take action, including refusing registration or imposing additional specific conditions of registration.

121. In addition, we will use evidence previously collected or generated by HEFCE, or by DfE, to decide whether you satisfy the following initial conditions of registration:

- Quality and standards conditions B1-B5
- Financial viability and sustainability condition D.

122. The evidence we will use for these conditions is set out below.

### Quality and standards conditions B1-B5

Condition B1	The provider must deliver well designed courses that provide a high quality academic experience for all students and enable a student's achievement to be reliably assessed.
Condition B2	The provider must provide all students, from admission through to completion, with the support that they need to succeed in and benefit from higher education.
Condition B3	The provider must deliver successful outcomes for all of its students, which are recognised and valued by employers and/or enable further study.
Condition B4	The provider must ensure that qualifications awarded to students hold their value at the point of qualification and over time, in line with sector recognised standards.
Condition B5	The provider must deliver courses that meet the academic standards as they are described in the Framework for Higher Education Qualifications (FHEQ) at Level 4 or higher.



123. You do not need to submit any additional evidence to demonstrate that you satisfy the quality and standards conditions as we will use existing evidence and indicators constructed from data that you have already submitted.

#### **Providers that are currently directly funded by HEFCE**

124. We will use the outcomes of the 2016-17 Annual Provider Review (APR) process, the outcomes of any published Quality Review Visit (QRV), progress against any action plan, and any outcomes of an Unsatisfactory Quality Scheme (UQS) investigation, to assess whether you satisfy conditions B1, B2, B4 and B5.
125. To satisfy these conditions we would normally expect you to have an APR outcome of either 'meets expectations' or 'meets expectations with an action plan'. Judgements from any QRV should normally provide 'confidence'. Where there is 'limited confidence' and an action plan is in place we would expect to see that you are making satisfactory progress with this. We would also expect no adverse UQS findings.

#### **Providers that are designated for student support by the Secretary of State**

126. We will use the outcomes of the most recent published Higher Education Review (Alternative Providers) (HER (AP)), the outcomes of Quality Assurance Agency for higher Education (QAA) annual monitoring, including satisfactory progress on any action plan, and outcomes of any QAA concerns investigation, to assess whether you satisfy conditions B1, B2, B4 and B5.
127. To meet these conditions we would expect a HER (AP) outcome of 'meets UK expectations' in relation to the maintenance of academic standards and the quality of student learning opportunities. If you received a judgement of 'requires improvement to meet UK expectations' in either of these areas we will consider the progress you have made on implementing your action plan. We would also expect no adverse judgements from concerns investigations.

#### **All providers**

128. For condition B3 all providers will be assessed against the following indicators:
- a. Student continuation and completion indicators.
  - b. Degree and other higher education outcomes, including differential outcomes for students with different characteristics.
  - c. Graduate employment and, in particular, progression to professional jobs and postgraduate study.
129. In all cases, the indicators will be defined separately for splits of mode (full time and part time) and level of study (first degree, other undergraduate, postgraduate taught masters, PGCE, other postgraduate taught and postgraduate research). The indicators will be constructed from existing datasets and you will not be required to submit any new data. We will look at indicators relating to the provider registering with us and, within these, indicators for subcontracted delivery partners.
130. We will consider your actual performance over time rather than your performance when compared to a sector-adjusted benchmark. This is to ensure that a baseline level of performance is used to determine whether you may be registered, rather than a view of your performance as compared with other providers. We will take account of the context in which you operate, such as the type of provision you offer, when making judgements about your performance.

131. If it is not possible to construct indicators for you because we do not hold sufficient data, or where we have concerns about the reliability of your data, we will monitor your performance as reliable data becomes available to assess whether the condition is satisfied on an ongoing basis.

### **Financial viability and sustainability condition D**

Condition D	<p>The provider must:</p> <ul style="list-style-type: none"> <li>i. Be financially viable.</li> <li>ii. Be financially sustainable.</li> <li>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.</li> <li>iv. Have the necessary financial resources to continue to comply with all conditions of its registration.</li> </ul>
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132. You will not normally need to submit any additional evidence to demonstrate that you satisfy the financial viability and sustainability condition as we will use existing evidence and indicators constructed from this. You will, however, need to submit a new set of audited financial statements and associated financial forecasts if these have become available since your last submission to HEFCE. We will let you know if this applies to you.

### **Higher education institutions that were directly funded by HEFCE**

133. We will use the audited financial statements submitted to HEFCE in December 2017 and the financial forecasts and commentary submitted in July 2017 (or updated forecasts where these were requested) to assess this condition.

### **Further education colleges and sixth form colleges that were funded by HEFCE**

134. We will seek information from your principal regulator, the ESFA, to assess this condition. This will include any published notice of concern and the financial health rating for the last three years. To meet this condition we would normally expect you to have a financial health rating of at least 'satisfactory'. If your most recent financial health rating is 'inadequate' we will ask for more information from the ESFA before making a decision.

### **Providers that are designated for student support by the Secretary of State**

135. We will use the audited financial statements, financial forecasts, commentary and any additional evidence that you submitted to HEFCE in your annual return as part of the annual re-designation process for 2018-19. If you applied for and received course designation for 2018-19 after September 2017 we will use the evidence that you submitted as part of that application.

136. If a new set of audited financial statements has become available since your last submission to HEFCE, you will need to submit this on the basis set out in the Financial Reporting Standard 102 (FRS102). If we need this information we will tell you.

137. Audited financial statements must include:

- a. A 'Statement of financial position' (balance sheet).

- b. Either a single 'Statement of comprehensive income' incorporating profit or loss for the period and items of other comprehensive income; or a 'Statement of income and retained earnings'.
- c. A 'Statement of changes in equity'.
- d. A 'Statement of cash flows'.
- e. Notes to the financial statements.

138. The auditor must be:

- a. Independent of the provider.
- b. Independent of the preparer of the accounts and the financial statements.
- c. Listed on the Register of Statutory Auditors<sup>8</sup>.

139. If your financial performance and position has changed significantly from that set out in your most recent forecasts, you will also need to submit updated financial forecasts and a supporting financial commentary that explains these changes. We will provide a template for these forecasts and separate guidance about how to complete the template.

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<sup>8</sup> See [www.auditregister.org.uk/Forms/Default.aspx](http://www.auditregister.org.uk/Forms/Default.aspx).

## **Section 9: Do you satisfy the initial conditions of registration and what is the risk that you will breach conditions in future?**

### **Assessment against the initial conditions of registration**

140. We will carry out a detailed assessment of your application for registration using the evidence that you have submitted with your application and the evidence previously collected or generated by HEFCE, or by DfE. During the assessment process we may have further questions that we need you to answer. This means that you must be prepared to engage with us and to provide any other information that we request.
141. If the Director for Fair Access and Participation is considering your access and participation plan, there will be a period of discussion and challenge and you will have the opportunity to make amendments or provide further evidence if necessary.

### **Risk assessment**

142. As we assess your application we will also conduct a risk assessment to determine the extent of the risk that you will breach one or more of your general ongoing conditions of registration once you are registered.
143. Where our assessment suggests that you may not be able to satisfy the initial conditions of registration, or where we consider there to be an increased risk of a breach of an ongoing condition of registration, we may seek additional information.
144. We will assess your SPP in the context of this risk assessment and in the context of your own assessment of risks to the continuation of study for your students. If we do not think the provisions of your plan are sufficient for the level of risk we think exists to students' continuation of study, we may require additional mitigation in your SPP before this can be approved.

### **General and specific ongoing conditions of registration**

145. Where we decide that you satisfy the initial conditions of registration, we will determine:
  - a. Which general ongoing conditions of registration will apply to you.
  - b. Whether any specific ongoing conditions of registration will apply to you to mitigate any areas of increased risk identified by our risk assessment.
  - c. Whether enhanced monitoring is required as a result of our risk assessment.
146. If you deliver higher education through a subcontractual arrangement, we will use evidence from your lead provider(s) to assess whether you satisfy some of the ongoing conditions of registration.
147. If you are only applying to register so that your eligible students can access the Disabled Students' Allowance some of the ongoing conditions of registration will not be applied to you. We will contact you with more information about this.

## Section 10: What is the outcome of your application?

### If your application is successful

148. If we approve your application for registration we will write to you to confirm:

- a. The date of your registration and the date on which we will publish your details on the Register.
- b. That you satisfy the initial conditions of registration.
- c. The general ongoing conditions of registration that will apply to you.
- d. Whether we will impose any specific conditions of registration.
- e. Whether we will put in place any enhanced monitoring.

### If your application is unsuccessful

149. If we intend to refuse your application for registration, we will notify your governing body of our intention to refuse registration setting out:

- a. The reasons for our refusal.
- b. The method for you to make representations about our intention.
- c. That you have 28 days from the date of our notification that we intend to refuse your application to make such representations.

150. We will consider any representations you wish to make before making our final decision.

### Our decision following representations

151. If your representations are successful we will write to you to confirm:

- a. The date of your registration and the date on which we will publish your details on the Register.
- b. That you satisfy the initial conditions of registration.
- c. The general ongoing conditions of registration that will apply to you.
- d. Whether we will impose any specific conditions of registration.
- e. Whether we will put in place any enhanced monitoring.

152. If our decision is to refuse your application for registration, we will write to you to set out the grounds for our refusal.

## Section 11: What do you need to do to stay registered?

153. When you are successfully registered, you will need to continue to satisfy our regulatory requirements. When we write to you with our decision we will explain what you need to do to stay registered.
154. Our requirements and approach to regulation during the transition period up to 31 July 2019 are set out in:
- OfS regulatory notice 2: Regulation up to 31 July 2019 of providers that were previously funded by the Higher Education Funding Council for England
  - OfS regulatory notice 3: Regulation up to 31 July 2019 of providers currently designated for student support by the Secretary of State
  - OfS regulatory notice 4: Regulation of newly registered providers up to 31 July 2019.
155. The OfS regulatory framework will be fully implemented from 1 August 2019 and its requirements and approach are set out in OfS 2018.01.

### Registration fees

156. There is no fee payable for the initial registration process. You will be required to pay an annual registration fee from 1 August 2019 and separate guidance on fees will be published.

# PART C: Annexes

## Annex A: Am I eligible for registration?

1. You can only register with the Office for Students (OfS) if you are, or intend to become, an English higher education provider. We will consider three elements to determine whether an entity is an English higher education provider:
  - a. It provides 'higher education'.
  - b. Its activities are 'principally carried on in England'.
  - c. It is an 'institution'.
2. More information about each of these elements is provided below.

### What is 'higher education'?

3. 'Higher education' is defined in the Higher Education and Research Act 2017 as a course of any description listed in Schedule 6 (as amended) to the Education Reform Act 1988<sup>9</sup>.

### What does it mean to have activities that are 'principally carried on in England'?

4. An English higher education provider is a provider whose activities are carried on, or principally carried on, in England. We interpret 'principally carried on in England' as meaning that more than 50 per cent of your activities are carried on in England. In assessing where your activities are carried on, we will take 'activities' to mean the activities that support the provision of higher education – including the delivery of teaching, designing of courses – rather than the learning. This means that it is the location of the provision, rather than the location of students, that will usually be the defining factor. For distance learning provision that is not delivered live, the location from which the provision is designed, managed and/or assessed will be the relevant location.

### What is an 'institution'?

5. A provider can only be registered if it is an institution providing higher education. To determine whether an entity is an institution for these purposes, we 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.
  - 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.
6. 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:

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<sup>9</sup> See [www.legislation.gov.uk/ukpga/1988/40/schedule/6](http://www.legislation.gov.uk/ukpga/1988/40/schedule/6).

- 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 cashflow
  - it will have all these characteristics for legitimate business reasons, a primary or dominant purpose of which is not to enable the entity to be separately registered with the OfS.
7. 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, then the principles 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.
8. 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.
9. Where an entity is under the control of another entity we expect that:
- there will be transparency about the ownership, governance and financial viability and sustainability of the controlling entity to the extent that we will be able to gain the same assurance from the controlling entity as it could from any English entity subject to UK laws.
10. Where there is a complex legal form, for example involving overseas control, we may seek specialist advice including corporate intelligence and due diligence work from independent experts about these issues and may charge a fee to you for this work. If the fee is not paid we may decline to consider your application further. We 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.

**How will you decide if I meet the definition of an ‘English higher education provider’?**

11. We will use information you provide in your application and information previously collected or generated by HEFCE, or by the DfE, to decide whether you are eligible to register. If we do not think that you meet the definition of an ‘English higher education provider’ we will contact you separately.

## Annex B: Initial conditions of registration

Initial conditions of registration		Does a provider need to provide new evidence?	What evidence will the OfS use to assess this condition?
<b>Access and participation conditions</b>			
Condition A1	An Approved (fee cap) provider intending to charge fees above the basic amount to qualifying persons on qualifying courses must: <ol style="list-style-type: none"> <li>i. Have in force an access and participation plan approved by the Office for Students (OfS) in accordance with the Higher Education and Research Act 2017.</li> <li>ii. Take all reasonable steps to comply with the provisions of the plan.</li> </ol>	Yes	You will need to produce and submit an access and participation plan.
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: <ol style="list-style-type: none"> <li>i. Publish an access and participation statement.</li> <li>ii. Update and re-publish this statement on an annual basis.</li> </ol>	Yes	You will need to produce and submit an access and participation statement.
<b>Quality and standards conditions</b>			
Condition B1	The provider must deliver well-designed courses that provide a high quality academic experience for all students and enable a student's achievement to be reliably assessed.	No	<p><b>Providers funded by the Higher Education Funding Council for England (HEFCE)</b> We will use the outcomes of the 2016-17 Annual Provider Review process, outcomes of any Quality Review Visit, progress against any action plan, and any outcomes of an Unsatisfactory Quality Scheme investigation, to assess whether you satisfy conditions B1, B2, B4 and B5</p> <p><b>Providers designated for student support</b> We will use the outcomes of the most recent published Higher Education Review (Alternative Providers), the outcomes of</p>
Condition B2	The provider must provide all students, from admission through to completion, with the support that they need to succeed in and benefit from higher education.		
Condition B3	The provider must deliver successful outcomes for all of its students, which are recognised and valued by employers, and/or enable further study.		
Condition B4	The provider must ensure that qualifications awarded to students hold their value at the point of qualification and over time, in line with sector recognised standards.		

Condition B5	The provider must deliver courses that meet the academic standards as they are described in the Framework for Higher Education Qualifications at Level 4 or higher.		<p>Quality Assurance Agency for Higher Education (QAA) annual monitoring (including progress on any action plan), and any outcomes of any QAA concerns investigation, to assess whether you satisfy conditions B1, B2, B4 and B5</p> <p><b>All providers</b> For condition B3 all providers will be assessed against the following indicators constructed from existing data submitted to the Higher Education Statistics Agency:</p> <ul style="list-style-type: none"> <li>• student continuation and completion indicators</li> <li>• degree and other higher education outcomes, including differential outcomes for students with different characteristics</li> <li>• graduate employment and, in particular, progression to professional jobs and postgraduate study.</li> </ul>
<b>Guidance on consumer protection law condition</b>			
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.	Yes	You will need to produce and submit a self-assessment of how you have given due regard to relevant guidance about how to comply with consumer protection law.
<b>Student protection plan condition</b>			
Condition C3	<p>The provider must:</p> <ol style="list-style-type: none"> <li>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.</li> <li>ii. Take all reasonable steps to implement the provisions of the plan if the events set out in the plan take place.</li> <li>iii. Inform the OfS of events, except for the closure of an individual course, that</li> </ol>	Yes	You will need to produce and submit a student protection plan.

	require the implementation of the provisions of the plan.		
<b>Financial viability and sustainability condition</b>			
Condition D	The provider must: <ul style="list-style-type: none"> <li>i. Be financially viable.</li> <li>ii. Be financially sustainable.</li> <li>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.</li> <li>iv. Have the necessary financial resources to continue to comply with all conditions of its registration.</li> </ul>	No	<p><b>Higher education institutions currently funded by HEFCE:</b> We will use the audited financial statements submitted to HEFCE in December 2017 and the financial forecasts and commentary submitted in July 2017 to assess this condition.</p> <p><b>Further education colleges and sixth form colleges:</b> We will seek information from the Education and Skills Funding Agency to assess this condition.</p> <p><b>Providers currently designated for student support:</b> We will use the audited financial statements, financial forecasts, commentary and any other relevant information submitted to HEFCE in September 2017 as part of the annual designation process.</p>
<b>Management and governance conditions</b>			
Condition E1	The provider's governing documents must uphold the public interest governance principles that are applicable to the provider.	Yes	<p>You will need to produce and submit a self-assessment of:</p> <ul style="list-style-type: none"> <li>• how your governing documents uphold the public interest governance principles</li> <li>• the appropriateness, adequacy and effectiveness of your management and governance arrangements.</li> </ul> <p><b>Further education colleges and sixth form colleges:</b> Your self-assessment only needs to cover the management and governance arrangements for your higher education provision.</p>
Condition E2	The provider must have in place adequate and effective management and governance arrangements to: <ul style="list-style-type: none"> <li>i. Operate in accordance with its governing documents.</li> <li>ii. Deliver, in practice, the public interest governance principles that are applicable to it.</li> <li>iii. Provide and fully deliver the higher education courses advertised.</li> <li>iv. Continue to comply with all conditions of its registration.</li> </ul>		

## Annex C: Template for producing a self-assessment on guidance on consumer protection law

Provider's name:

Provider's UKPRN:

### Your overall approach to ensuring compliance with consumer protection law

*Explain here your approach to complying with consumer protection law and the mechanisms you use to monitor and ensure compliance with consumer protection law. Below are some headings and examples which might be useful, but this is not, and is not intended to be, exhaustive or prescriptive.*

*For example:*

*'We are compliant/partially compliant/not yet compliant with consumer protection law.'*

*'We think this because...'*

*'The evidence that demonstrates this is...'*

*'We have a member of staff who is responsible for consumer protection law issues'*

*'We take legal advice when developing new contracts and when we change terms and conditions'*

*'Consumer protection law issues are discussed at...'*

*'There is an annual review...'*

*'To ensure that we will be fully compliant, we will... and we will have done this by...'*

*In this section, you might want to refer to the following as evidence that supports the view you have formed in your self-assessment. There is no need to submit any of this additional evidence but we may ask to see it if we have concerns that you do not satisfy the condition:*

- information on organisational and staffing arrangements, for example, whether there is a department and/or designated staff member responsible for consumer law issues*
- information on working groups or committees established to tackle issues relating to consumer law such as information management and provision, complaints handling and the setting of terms and conditions and/or contracts*
- information about staff training on your consumer law obligations*
- details of reviews (planned or actual) into information management and provision, complaint handling and the setting of terms and conditions and/or contracts*
- evidence that professional legal advice has been sought*
- use of model contracts, terms and conditions*
- policies relating to sources of information for staff and students, with examples of how this is provided*
- policies and procedures relating to consumer law obligations, such as information management and provision, complaints handling and setting terms and conditions and/or contracts.*

**Your approach to providing information to applicants and students: research and application stage, offer stage and enrolment stage**

*Explain here how you ensure that applicants and students are provided with accurate information about their course, fees and other relevant costs and about your institution, and that such information is accurate, clear, timely and accessible.*

*For example:*

*'We publish a prospectus containing information on x, y, z'*

*'We also provide the following information...'*

*'We ensure this is accurate and clear by...'*

*'We know when information is not accurate or clear because... and we take these steps to improve it.'*

*In this section, evidence you might want to refer to includes:*

- *links to web-site or other prospectus course descriptions*
- *information about the structure of the courses you offer and the relevant fees/costs;*
- *letters supporting offers to applicants*
- *details of reviews (planned or actual) into information management and provision*
- *policies relating to sources of information for staff and students, with examples of how this is provided*
- *policies and procedures relating to consumer law obligations, such as information management and provision.*

**Your contract terms and conditions**

*Explain here the contracts you use to govern relationships with students and how you ensure that these are fair and have transparent terms and conditions. For example:*

*'We have the following contracts...'*

*'Our terms and conditions, including rules and regulations, are made available to students through a, b, c and our website and intranet [link]'*

*'We ensure that terms and conditions and regulations are clear and understandable to students by...'*

*'We take the following actions/steps to ensure the terms are fair...'*

*'We use model contracts for the following services...'*

## **Your complaint handling processes and practices**

*Explain here how you ensure that ensure that complaint handling practices are clear, accessible and fair. For example:*

*'We have a complaints process which students are made aware of through the following mechanisms a, b, c and is available on our website and intranet [link].'*

*'Where students are studying at a partner organisation we...'*

*'The Office of the Independent Adjudicator's good practice framework is used to...'*

*'We have the following evidence that our complaints process is clear, accessible and fair...'*

*'We ensure that staff know and are competent at following the process because...'*

## Annex D: Template for a student protection plan

Provider's name:

Provider's UKPRN:

Legal address:

Contact point for enquiries about this student protection plan:

### **Student protection plan for the period [insert academic year]**

#### **1. An assessment of the range of risks to the continuation of study for your students, how those risks may differ based on your students' needs, characteristics and circumstances, and the likelihood that those risks will crystallise**

*Please provide an evidenced statement of your assessment of the range and level of risks to the continuation of study for your students. For example:*

*'The risk that the provider as a whole is unable to operate is very low because our financial performance is x, y and z and we have business continuity plans to deal with a, b and c.'*

*'The risk that we will no longer deliver courses at our Eastwood campus in the next three years is significant because we are considering the closure of this site. This poses a particular risk to students with caring responsibilities, as the Eastwood campus is our only one which has an on-site crèche.'*

*'The risk that we are no longer able to deliver programmes in highly specialised areas in the next three years is moderate because x, y and z. These programmes have a high proportion of students in receipt of bursaries.'*

*'The risk that we are no longer able to deliver material components of our courses is low because we design our modules to be taught by integrated teams of academic staff. For our postgraduate courses in Modern Nordic this risk is moderate because we are dependent on particular members of academic staff to deliver core teaching.'*

#### **2. The measures that you have put in place to mitigate those risks that you consider to be reasonably likely to crystallise**

*Please provide an evidenced statement of the measures you have put in place to preserve continuation of study for your students in those areas where you consider the risk to be increased. For example:*

*'If we are unable to deliver courses at our Eastwood campus in the next three years we will put in place x, y and z.'*

*'If we are unable to deliver courses in specialised programmes in the next three years we will put in place x, y and z.'*

*'If we are no longer able to deliver material components of our postgraduate courses in Modern Nordic we will put in place x, y and z.'*



**3. Information about the policy you have in place to refund tuition fees and other relevant costs to your students and to provide compensation where necessary in the event that you are no longer able to preserve continuation of study**

*Please link to or provide a copy of your refund and compensation policy and ensure that it makes provision for:*

- refunds for students in receipt of tuitions fee loan from the Student Loans Company.
- refunds for students who pay their own tuition fees.
- refunds for students whose tuition fees are paid by a sponsor.
- the payment of additional travel costs for students affected by a change in the location of their course.
- commitments to honour student bursaries.
- compensation for maintenance costs and lost time where it is not possible to preserve continuation of study.
- compensation for tuition and maintenance costs where students have to transfer courses or provider.

*Please provide an evidenced statement of how you will ensure that you can deliver the financial implications of your refund and compensation policy. For example:*

*'We have cash reserves of x which would be sufficient to provide refunds and compensation for those y students for whom we have identified an increased risk of non-continuation of study.'*

*'We will put in place insurance arrangements of x to provide refunds and compensation for those y students for whom we have identified an increased risk of non-continuation of study. We will ensure that this is in place by 1 August 2019.'*

**4. Information about how you will communicate with students about your student protection plan**

*Please provide a statement about how you will communicate the provisions in your student protection plan to current and future students. For example:*

*'We will publicise our student protection plan to current and future students by...'*

*'We will ensure that staff are aware of the implications of our student protection plan when they propose course changes by...'*

*Please provide a statement about how you will work with your current students in the development of your student protection plan. For example:*

*'We will review our student protection plan by...'*

*'Our students will be involved in our review by...'*

*Please provide a statement about the arrangements you will put in place to communicate with affected students should your student protection plan need to be implemented. For example:*

*'We will inform our students if there are to be material changes to their course by...'*

*'We will give students x days' notice when we need to make material changes to their course...'*

*'If we need to implement the measures in our student protection plan we will do x, y and z to support students collectively and individually.'*

*'We will put in place a, b and c arrangements to ensure that our students have access to independent advice if we need to implement the measures in our student protection plan.'*

## Annex E: Public interest governance principles

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 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.

For the purposes of principle IX, **indicators that a person may not be a 'fit and proper' person** are provided in paragraph 100.

### Additional public interest principle for DAPs holders:

X. **Records:** Where degree awarding powers (DAPs) 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 the Higher Education and Research Act 2017 exists, the provisions setting out those powers must be retained and may not be altered without the consent of the Office for

Students<sup>10</sup>.

**Additional public interest principles for Approved (fee cap) providers in receipt of financial support from the Office for Students or from UK Research and Innovation:**

- 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.

Definitions of regularity, propriety and value for money are provided in the box on page 20.

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<sup>10</sup> 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.

## Annex F: Template for producing a self-assessment on management and governance: providers designated for student support by the Secretary of State

Provider's name:

Provider's UKPRN:

### Your management and governance arrangements

*Briefly describe here your management and governance arrangements and how these are appropriate for your size and complexity as an English higher education provider.*

*This should include a description of your legal form and governance structure and how you oversee partnership arrangements where you are the lead provider.*

*In this section, you should describe the following:*

- *details of control (including geographical location of control) and ownership of your organisation*
- *details of any group structure*
- *geographical spread of locations you operate at, including whether any of these are overseas*
- *size of your organisation in terms of numbers of staff, students, turnover, total net assets*
- *number and type of partnerships.*

*For example:*

*'We are a medium sized provider with £xx turnover, xx students, xx staff. We are incorporated in England and are a wholly owned subsidiary of [name] a company also incorporated and based in England.'*

*'We have three subsidiary companies a, b, c, all based in England.'*

*'Our group structure looks like this [structure chart].'*

*'We have the following governing documents ...'*

*'These set out that...'*

*'The body with ultimate decision making powers is...'*

*'It delegates responsibility for a, b, c to x, y, z'*

*'These arrangements are appropriate for the size and complexity of our organisation because...'*

*In this section, you might want to make reference to the following:*

- *governing documents*
- *committee structures*
- *delegation arrangements*
- *validation and franchise agreements where you are the lead provider*
- *governance arrangements for any satellite/overseas campuses.*

*You do not need to submit any of these additional documents with your self-assessment but we may ask to see these if we are not satisfied that you meet the condition, or if you are also applying for degree awarding powers.*

## **Self-assessment of your management and governance arrangements**

*Explain here how your management and governance arrangements are adequate and effective. An arrangement is 'adequate' if it is capable of delivering a stated or implied objective and 'effective' if it is delivering its stated or implied objective.*

*If you follow a code of governance you can also use this as evidence by describing:*

- *the name, date and version of any governance code you follow*
- *how long you have used the code, how you monitor use of the code in your governance arrangements and how you review the effectiveness of arrangements*
- *outcomes of the most recent effectiveness review of your governing body and any of its committees (where appropriate).*

*For example:*

*'We follow the [name of code] published [date]'*

*'We have used this code for x years and conduct a review of compliance every [review period].'*

*'Reviews are conducted by y and the results implemented by z.'*

*'This code is appropriate because...'*

*'We do not meet the following elements of the code... because... but have the following alternative arrangements which we believe are appropriate because...'*

*'The most recent review showed...'*

*Or:*

*'We don't use a code of governance because...'*

*'We believe our management and governance arrangements are adequate because...'*

*'We believe they are effective because...'*

*You do not need to submit any additional documents with your self-assessment but we may ask to see further evidence if we have any concerns that you do not satisfy the condition or if you are also applying for degree awarding powers.*

## Public interest governance principles

Explain here how your governing documents uphold the public interest governance principles relevant to your application (see list of principles below). Where your chosen code of governance does not meet all of the relevant public interest governance principles you will need to demonstrate how you meet the remaining principles.

### Standard public interest governance principles: applicable to all providers

**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.

*For example:*

*'This is covered by our compliance with our chosen governance code which sets out...'*

*Or:*

*'Academic freedom is set out in xx document which states...'*

*Or:*

*'Academic freedom is not yet covered in our governing documents. To amend this we will... by [date].'*

**Accountability:** The provider operates openly, honestly, accountably and with integrity and demonstrates the values appropriate to be recognised as an English higher education provider.

*For example:*

*'This is covered by our compliance with our chosen governance code which sets out...'*

*Or:*

*'Accountability is set out in xx document which states...'*

*Or:*

*'Accountability is not yet covered in our governing documents. To address this we will... by [date].'*

**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.

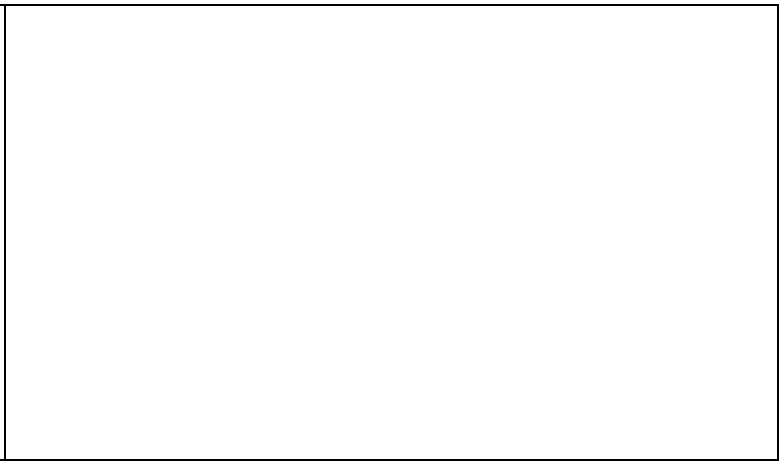
**Academic governance:** The governing body receives and tests assurance that academic governance is adequate and effective through explicit protocols with the senate/academic board (or equivalent).

**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.

<p><b>Value for money:</b> The governing body ensures that there are adequate and effective arrangements in place to provide transparency about value for money for students and (where a provider has access to the student support system or to grant funding) for taxpayers.</p>	
<p><b>Freedom of speech:</b> The governing body takes such steps as are reasonably practicable to ensure that freedom of speech within the law is secured within the provider.</p>	
<p><b>Governing body:</b> 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.</p>	
<p><b>Fit and proper:</b> 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.</p>	
<p><b>Additional public interest governance principle: providers authorised with degree awarding powers</b></p>	
<p><b>Records:</b> 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 the Higher Education and Research Act 2017 exists, the provisions setting out those powers must be retained and may not be altered without the consent of the Office for Students.</p>	
<p><b>Additional public interest governance principles: providers in receipt of financial support</b></p>	
<p><b>Independent members of the governing body:</b> 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.</p>	
<p><b>Regularity, propriety and value for money:</b> The governing body ensures</p>	



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.



## Annex G: Template for producing a self-assessment on management and governance: higher education institutions funded by HEFCE

Provider's name:

Provider's UKPRN:

### Your management and governance arrangements

*Briefly describe here your management and governance arrangements and how these are appropriate for your size and complexity as an English higher education provider.*

*If this description is set out in a Statement of Corporate Governance in your audited financial statements and you think this provides an appropriate description, please refer to this.*

*For example:*

*'This information is set out in a Statement of Corporate Governance in our published financial statements.'*

### Appropriateness, adequacy and effectiveness of your management and governance arrangements

*Please provide an evidenced statement about how your management and governance arrangements are appropriate for your size and complexity as an English higher education provider.*

*Provide an evidenced assessment of how your management and governance arrangements are adequate and effective. An arrangement is 'adequate' if it is capable of delivering a stated or implied objective and 'effective' if it is delivering its stated or implied objective.*

*If this assessment is set out in a Statement of Corporate Governance in your audited financial statements and you think this provides an appropriate description, please refer to this.*

*If you follow a code of governance you can also use this as evidence by describing:*

- the name, date and version of any governance code you follow*
- how long you have used the code, how you monitor use of the code in your governance arrangements and how you review the effectiveness of arrangements*
- outcomes of the most effectiveness review of the governing body and any of its committees.*

*For example:*

*'This information is set out in a Statement of Corporate Governance in our published financial statements.'*

*Or:*

*'We use the HE code of governance published by the CUC which identifies the key values and practices on which the effective governance of UK HEIs is based.'*

*'We have used this code for x years and conduct a review of compliance every [review period].'*

*'Reviews are conducted by y and the results implemented by z.'*

*'We do not meet the following elements of the code...because...but have the following alternative arrangements which we believe are appropriate because....'*

*'The most recent review showed...'*

*You do not need to submit any additional documents with your self-assessment but we may ask to see further evidence if we have any concerns that you do not satisfy the condition or if you are also applying for degree awarding powers.*

### **Public interest governance principles**

*Explain here how your governing documents uphold the public interest governance principles relevant to your application (see list of principles below). Where your chosen code of governance does not meet all of the relevant public interest governance principles you will need to demonstrate how you meet the remaining principles.*

### **Standard public interest governance principles: applicable to all providers**

**Academic freedom:** Academic staff at an English higher education provider have freedom within the law:  
(a) to question and test received wisdom; and  
(b) 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.

*For example:  
'This is covered by our compliance with our chosen governance code which sets out...'*

*Or  
'Academic freedom is set out in xx document which states...'*

*Or  
'Academic freedom is not yet covered in our governing documents. To amend this we will... by [date]'*

**Accountability:** The provider operates openly, honestly, accountably and with integrity and demonstrates the values appropriate to be recognised as an English higher education provider.

*For example:  
'This is covered by our compliance with our chosen governance code which sets out...'*

*Or  
'Accountability is set out in xx document which states...'*

*Or  
'Accountability is not yet covered in our governing documents. To address this we will... by [date]'*

**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.

**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).	
<b>Risk management:</b> 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.	
<b>Value for money:</b> The governing body ensures that there are adequate and effective arrangements in place to provide transparency about value for money for students and (where a provider has access to the student support system or to grant funding) for taxpayers.	
<b>Freedom of speech:</b> The governing body takes such steps as are reasonably practicable to ensure that freedom of speech within the law is secured within the provider.	
<b>Governing body:</b> 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.	
<b>Fit and proper:</b> 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.	
<b>Additional public interest governance principle: providers authorised with degree awarding powers</b>	
<b>Records:</b> 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	
<b>Additional public interest governance principles: providers in receipt of financial support</b>	
<b>Independent members of the governing body:</b> 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.	

**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.

## Annex H: Template for producing a self-assessment on management and governance: further education colleges and sixth form colleges

Provider's name:

Provider's UKPRN:

### Your management and governance arrangements

*Briefly describe here your management and governance arrangements for your higher education provision.*

*This should include a description of your management and governance structure for higher education and how you oversee partnership arrangements where you are the lead provider. In this section, you should describe the following:*

- *details of any group structure*
- *geographical spread of locations you operate at, including whether any of these are overseas*
- *size of your higher education provision in terms of numbers of staff, students, income and in relation to your further education provision*
- *number and type of partnerships.*

*For example:*

*'We are a medium sized further education provider with a small proportion of higher education activity. Our higher education activity makes up x% of our provision with £xx in income, xx students, xx staff.'*

*'Our group structure looks like this [structure chart].'*

*'We have the following governing documents covering our higher education activity...'*

*'These set out that...'*

*'The body with ultimate decision making powers for our higher education activity is...'*

*'It delegates responsibility for a, b, c to x, y, z'*

*'These arrangements are appropriate for the size and complexity of our higher education activity because...'*

*In this section, you might want to refer to the following:*

- *governing documents*
- *committee structures*
- *delegation arrangements*
- *validation and subcontractual agreements where you are the lead provider*
- *governance arrangements for any satellite campuses.*

*You do not need to submit any of these additional documents with your self-assessment but we may ask to see these if we are not satisfied that you meet the condition, or if you are also applying for degree awarding powers.*

## **Self-assessment of your management and governance arrangements**

*Explain here how your management and governance arrangements for your HE provision are adequate and effective. An arrangement is 'adequate' if it is capable of delivering a stated or implied objective and 'effective' if it is delivering its stated or implied objective.*

*If you follow a code of governance you can also use this as evidence by describing:*

- *the name, date and version of any governance code you follow*
- *how long you have used the code, how you monitor use of the code in your governance arrangements and how you review the effectiveness of arrangements*
- *outcomes of the most effectiveness review of the governing body and any subcommittees (where appropriate).*

*For example:*

*'We follow the [name of code] published [date].'*

*'We have used this code for x years and conduct a review of compliance every [review period]. Reviews are conducted by y and the results implemented by z.'*

*'This code is appropriate for our higher education activity because...'*

*'We do not meet the following elements of the code...because...but have the following alternative arrangements which we believe are appropriate because...'*

*'The most recent review showed...'*

*Or:*

*'We don't use a code of governance because....'*

*'We believe our management and governance arrangements for our higher education activity are adequate because...'*

*'We believe they are effective because...'*

*You do not need to submit any additional documents with your self-assessment but we may ask to see further evidence if we have any concerns that you do not satisfy the condition or if you are also applying for degree awarding powers.*

## Public interest governance principles

Explain here how your governing documents uphold the public interest governance principles relevant to your application (see list of principles below). Where your chosen code of governance does not meet all of the relevant public interest governance principles you will need to demonstrate how you meet the remaining principles.

### Standard public interest governance principles: applicable to all providers

**Academic freedom:** Academic staff at an English higher education provider have freedom within the law:

- (a) to question and test received wisdom; and
- (b) 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.

*For example:*

*'This is covered by our compliance with our chosen governance code which sets out...'*

*Or*

*'Academic freedom is set out in xx document which states...'*

*Or*

*'Academic freedom is not yet covered in our governing documents. To amend this we will... by [date]'*

**Accountability:** The provider operates openly, honestly, accountably and with integrity and demonstrates the values appropriate to be recognised as an English higher education provider.

*For example:*

*'This is covered by our compliance with our chosen governance code which sets out...'*

*Or*

*'Accountability is set out in xx document which states...'*

*Or*

*'Accountability is not yet covered in our governing documents. To address this we will... by [date]'*

**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.

**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).

**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.



<p><b>Value for money:</b> The governing body ensures that there are adequate and effective arrangements in place to provide transparency about value for money for students and (where a provider has access to the student support system or to grant funding) for taxpayers.</p>	
<p><b>Freedom of speech:</b> The governing body takes such steps as are reasonably practicable to ensure that freedom of speech within the law is secured within the provider.</p>	
<p><b>Governing body:</b> 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.</p>	
<p><b>Fit and proper:</b> 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.</p>	
<p><b>Additional public interest governance principle: providers authorised with degree awarding powers</b></p>	
<p><b>Records:</b> 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</p>	
<p><b>Additional public interest governance principles: providers in receipt of financial support</b></p>	
<p><b>Independent members of the governing body:</b> 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.</p>	
<p><b>Regularity, propriety and value for Money:</b> The governing body ensures that there are adequate and effective</p>	

<p>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.</p>	
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