

Office for  
Students



# Terms and conditions of funding for further education and sixth form colleges

For the period to 31 July 2019

Reference **OfS 2018.16**

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# Introduction

1. The Office for Students' (OfS's) regulatory framework published in February 2018 (OfS 2018.01) will not come fully into force until 1 August 2019. The secondary legislation that enacts the Higher Education and Research Act 2017 (HERA) makes provision for the powers and duties of the Higher Education Funding Council for England (HEFCE) (under the Further and Higher Education Act 1992) and the Director of Fair Access to Higher Education (under the Higher Education Act 2004) to be exercised by the OfS until all of its new powers are commenced.
2. This means that providers will be funded and regulated by the OfS from 1 April 2018 to 31 July 2019 through a combination of the powers and duties 'carried forward' from the previous legislation and the new HERA powers and duties. This is called the 'transition period'. The terms and conditions of funding in this document set out the requirements placed on further education colleges and sixth form colleges (FECs) under the 'carried forward' powers. For more information about our approach to regulation during the transition period see 'Regulatory notice 2: Regulation up to 31 July 2019 of providers that were previously funded by HEFCE' (OfS 2018.12).
3. The terms and conditions of funding set out in this document take effect from 1 April 2018 and apply during the transition period to 31 July 2019. They are made under section 65 of the Further and Higher Education Act 1992, as amended by a statutory instrument setting out the transitional arrangements, the Higher Education and Research Act 2017 (Consequential, Transitional, Transitory and Saving Provisions) Regulations 2018. They apply to FECs that we<sup>1</sup> fund, and to their governing bodies and accountable officers. They reflect our responsibility to provide annual assurances to Parliament that:
  - funds provided to us are being used for the purposes for which they were given
  - risk management, control and governance in the higher education sector are effective and
  - value for money is being achieved.
4. For an FEC's reporting obligations relating to students under paragraph 31, 'institution' means the institution including its related undertakings, as defined in Annex C, unless such undertakings:
  - are subject to a separate funding agreement directly with OfS
  - have been designated by the Secretary of State as institutions in the further education sector which have their own contract with the Education and Skills Funding Agency (ESFA) or
  - are schools as defined by section 4 of the Education Act 1996 or multi-academy trusts.
5. This document supersedes 'Memorandum of assurance and accountability between HEFCE and institutions' (HEFCE 2017/08).
6. We will make material revisions to this document only after consulting the higher education sector or its representative bodies. Because these terms and conditions are being issued before funding allocations for the 2018-19 academic year have been determined or announced, the OfS reserves the right to revise or add to terms and conditions applying to specific grants for the 2018-19 academic year, in relation to monitoring arrangements or the use of funds. Any

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<sup>1</sup> In this document, the terms 'we' and 'our' refer to the Office for Students and not to Research England or to both organisations.

such revisions or additions will be notified to institutions in advance of the first payments of those grants.

## **Terms and conditions previously imposed by HEFCE**

7. The OfS will assume responsibilities from the previous regulatory system during the transition period. In relation to financial years (April to March) and academic years (August to July) up to 2017-18 inclusive, terms and conditions of grant previously specified by HEFCE and agreements made by the Director of Fair Access to Higher Education continue to apply. The OfS will continue to monitor compliance with HEFCE's terms and conditions of grant and take action against institutions that are found to be in breach of them.
8. Actions that the OfS may take against institutions that are found to be in breach of previous HEFCE terms and conditions of grant for financial and academic years up to 2017-18 include (but are not limited to):
  - a. Recalculating and adjusting grants previously announced where these are found to have been informed by incorrect data from institutions.
  - b. Monitoring continued compliance with regulated fee limits and any access agreement(s) with the Director of Fair Access to Higher Education (or subsequently the OfS) in relation to students recruited in any year up to 2018-19 and taking action (including imposing financial requirements on an institution) if non-compliance is found.

## Our responsibilities

9. We will endeavour to work with institutions and others in the higher education sector to the highest standards of openness, integrity and consistency expected of public sector bodies. We recognise that FECs are autonomous bodies and acknowledge that FECs accept that they are accountable for the funding they receive. We will not ask for information that we already have, and as far as possible we will rely on data and information that FECs have produced to meet their own needs. We will make regulation efficient and effective and seek to ensure that its benefits outweigh the costs to institutions, ourselves and other parties.
10. We will respect commercial confidentiality within the constraints of the Freedom of Information Act 2000 and our own obligations to Parliament and under the framework document with our sponsor department.
11. Our grants to institutions are to fund activities defined by the Further and Higher Education Act 1992. For FECs, we fund the provision of 'prescribed' courses of higher education. We will normally pay recurrent funds to the institution in monthly instalments, in accordance with a funding profile for the whole academic year that will be notified separately. While we reserve the right to amend the profile during the year, we will make adverse changes to the profile only in exceptional circumstances and following consultation with the institution. Payments for the period 1 April 2018 to 31 July 2018 will reflect the residual balance of teaching grants that are due for the 2017-18 academic year but have not already been paid by HEFCE.

## Responsibilities of institutions

### Regularity and propriety

12. FECs must use OfS funding only for activities that are eligible for funding under the Further and Higher Education Act 1992, as this is the intended purpose for which the funds have been provided by Parliament. When using this funding FECs must ensure they apply proper processes that ensure effective accountability.
13. Governing bodies and accountable officers are accountable for their decisions and actions, and must submit themselves to whatever scrutiny is appropriate to their office. They should also be as open as possible about all the decisions and actions that they take that may affect funding provided by the OfS.
14. We will seek assurance from the ESFA, as the primary regulator for FECs, about the regularity and propriety of the use of OfS funding by FECs.

### Governing bodies

15. The governing body of an institution is collectively responsible and has ultimate responsibility that cannot be delegated for overseeing the institution's activities, to determine its future direction and to foster an environment in which its mission is achieved. In accordance with the FEC's own articles of governance, there should be effective arrangements for providing assurance to the governing body that the institution:
  - a. Has effective arrangements for the management and quality assurance of data submitted to the Education and Skills Funding Agency, the Student Loans Company (SLC), the OfS and other funding and regulatory bodies. (We reserve the right to use and publish our own estimates of data where we are not satisfied that the FEC data are fit for purpose. We also

reserve the right not to publish data.) Responsibility for the quality of data used for internal decision-making and external reporting, which must be fit for purpose, rests with the FEC itself. Data submitted for funding and monitoring purposes must comply with directions published by HEFCE (previously) and the OfS; if in doubt an institution should ask the OfS to provide an authoritative, written ruling.

b. Has an effective framework to manage the quality of learning and teaching and to maintain academic standards.

## **Accountable officer**

16. In this document the OfS refers to the accountable officer; this is the same person as the accounting officer for further education and sixth form colleges as defined by the ESFA.
17. The accountable officer is personally responsible to the governing body for ensuring compliance with the terms and conditions of funding and for providing the OfS with clear assurances to this effect.
18. The accountable officer is also required to report to the OfS on behalf of the FEC in relation to the requirements in relation to accountability for funding. In exceptional circumstances OfS may take the view that the accountable officer is failing to meet these responsibilities. Faced with this position the OfS would be obliged to respond in a fair, reasonable and proportionate way.
19. The accountable officer must also inform the OfS about any planned major changes in higher education strategy (including any plans to withdraw from higher education that is directly or indirectly funded by the OfS) and plans for major restructuring, merger with another institution or organisation or change of corporate form (including where a sixth form college plans to become an academy). Notification to the OfS should be as soon as possible and at least three months before the changes are due to take effect.

## **Quality of provision**

20. During the transition period the OfS is subject to the 1992 Further and Higher Education Act's duty to secure that provision is made for assessing the quality of education provided in institutions for whose activities it provides, or is considering providing, financial support<sup>2</sup>. Up to 31 July 2019, the OfS will discharge this duty using an approach that replicates the Annual Provider Review process adopted by HEFCE in previous years. It will also investigate complaints made about quality or standards in FECs as necessary. If an FEC does not meet the quality assessment requirements it will be expected to make any necessary improvements through the implementation of an agreed action plan. Improvements will be expected and, in exceptional circumstances, sanctions may be applied. Our ultimate sanction under these terms and conditions is the withdrawal of some or all OfS funding.

## **Provision of information to the OfS**

21. It is a condition of funding that FECs supply data requested by HEFCE, the OfS or its agents to allow for provision of information to prospective and current students. For example, institutions

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<sup>2</sup> Further and Higher Education Act 1992, part II, section 70  
[www.legislation.gov.uk/ukpga/1992/13/section/70#commentary-c1106607](http://www.legislation.gov.uk/ukpga/1992/13/section/70#commentary-c1106607).

must provide Unistats data annually according to the published specification and timetable<sup>3</sup>, and display a 'widget' prominently on each main course page where the course has been included in the Unistats return. Guidance on how to embed the widget into course pages is provided on the Higher Education Statistics Agency website (<https://www.hesa.ac.uk/collection/c17061>).

## **Access and participation during 2017-18 and 2018-19**

22. All FECs that have an access agreement with the Director of Fair Access to Higher Education for 2017-18 and/or 2018-19 (or as subsequently agreed with the OfS) or are in receipt of 2017-18 or 2018-19 student premium and disabled students' premium funding from HEFCE or the OfS are required to submit a monitoring return to the OfS relating to each year. These returns are a condition of the student premium and disabled students' premium funding provided, and required so that OfS can monitor the extent to which institutions have met the obligations set out in their access agreements and the progress they have made against their milestones and targets. The OfS will use this information in determining whether institutions may have failed to comply with any provision of their approved plan. Further information about monitoring requirements will be provided separately (OfS 2018.12).

## **Other requirements**

### **Subscriptions to sector bodies**

23. It is a condition of funding that FECs in receipt of OfS funding:
- a. Subscribe to the Quality Assurance Agency for Higher Education.
  - b. Subscribe to the Office of the Independent Adjudicator for Higher Education under the Higher Education Act 2004, as amended by Section 89 of the Consumer Rights Act 2015
  - c. Ensure that their use of JANET and SuperJANET networks conform to acceptable practice and current legislation.
24. Non-compliance with regulatory requirements or requirements of such other bodies may be taken into account in our assessment of risk, and there may be actions that flow from that assessment.

### **State aid**

25. FECs must ensure compliance with EU state aid law in their own uses of OfS funding. In the case of any breach of state aid law we may be required to recover all or some funding, together with interest. The OfS may also be required to withhold funding or aspects of funding to any institution which is subject to a state aid enquiry or which has an outstanding recovery notice against it.

### **Payment of grant**

26. Each year we determine how much money to allocate to each institution. FECs should use this money only for the activities that are eligible for funding, as defined in the Further and Higher Education Act 1992 or other relevant legislation, as this is the intended purpose for which the funds have been provided by Parliament. When using these grants FECs should ensure they apply proper processes that ensure effective accountability.

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<sup>3</sup> Further information about Unistats data requirements is available at <http://www.hefce.ac.uk/lt/unikis/>.

27. All funding provided by the OfS is subject to the conditions set out in this document and in accepting funding, the institution is agreeing to comply with those conditions.
28. The institution is free to distribute internally at its own discretion all funding from the OfS which is not earmarked or provided for a specific purpose, subject to that funding being used for the activities eligible for funding under section 65(2)(c) of the Further and Higher Education Act 1992. Any funds that have been earmarked or provided for a specific purpose must be used solely for the purpose for which those funds were earmarked or provided.
29. We may withhold or require an institution to repay part or all of a grant if it does not comply with the conditions we attach to the funding or if it has been incorrectly over-funded. In cases where we require repayment we may charge interest, at 2 per cent above the Bank of England base rate, for the period before the institution repays the funding to us.

## Institutional engagement

30. The Agreement on Institutional Designation (OfS 2018.17) has been developed with Universities UK, GuildHE and the Association of Colleges to ensure that accountability for public funds continues to be effective following the government's reforms of the funding of higher education. The Agreement is effective until the new regulatory framework is fully implemented on 1 August 2019. Any actions that OfS might take under that Agreement may also lead to actions under these terms and conditions.

## Data assurance

31. FECs are required to supply the OfS with data to inform allocations of funding and for other purposes. The responsibility for the quality and accuracy of that data rests with the FEC. The OfS relies on the institution's own data assurance processes where possible.
32. The OfS monitors the reasonableness of data and undertakes verification, validation and reconciliation work between the individualised learner record (ILR) and other datasets. The OfS may undertake audits at an FEC if it deems this necessary. Data audits will assess the strength of institutional systems and controls as well as assessing the accuracy of the data submissions.
33. The terms and conditions attached to funding include a requirement on the institution to provide information. The data required include the ILR data relating to higher education activity collected by the ESFA during and/or for the 2017-18 and 2018-19 academic years, and the 2018 Higher Education in Further Education: Students (HEIFES) survey (or such other survey as may replace this under the funding method for teaching). This data enables the OfS to monitor the delivery of teaching during 2017-18 and 2018-19, and informs the consideration of funding. FECs are also required:
  - a. To submit student contact details to enable the OfS, or its agents, to conduct the National Student Survey and to provide information to OfS for publication on the Unistats website (or its replacement website).
  - b. To make arrangements for and fully fund the Destination of Leavers from Higher Education (DLHE) survey in 2017 (for students who leave during the 2016-17 academic year). Additionally, institutions are required to provide contact details and fully fund the



successor to the DLHE survey<sup>4</sup> for relevant students who leave during the 2017-18 and 2018-19 academic years.

34. Compliance with the code of practice for higher education data collections<sup>5</sup> is a condition of OfS funding for all institutions.
35. The institution agrees that non-statutory bodies which perform a function for the higher education sector, specifically UCAS and the Student Loans Company, may provide to the OfS such information (including financial information) relating to applications to, offers and acceptances by, and students at the institution as the OfS may require for the purposes of the exercise of any of its functions under the Education Acts. These functions include the allocation and monitoring of funding and student numbers and the provision of advice to the Secretary of State. The OfS will notify the institution in advance of any data request it may make to these other bodies.

## **Data audit and reconciliation**

36. Data collected from institutions informs our funds for teaching. We and our agents also use data from institutions to provide public information about institutions and their courses, including through the Unistats website. We will audit data selectively, through audit visits and other processes. We will also use data which institutions provide to the ESFA, HEFCE and other organisations to verify the data institutions send directly to us. We will use the outcomes of these data audits and reconciliations to review funding both for the year in question and all subsequent years.
37. If we find, either through reconciliations with ESFA, HEFCE or other organisations' data, or through any data audit, that erroneous data has resulted in institutions receiving incorrect funding, then we will adjust these accordingly (subject to any appeals process that may apply and the availability of our funds). We will recover funding from an institution for any year informed by the audited or reconciled data (including any consequential effects on funding for subsequent years) unless there is evidence that an institution has deliberately not complied with the funding rules or has ignored previous HEFCE or OfS advice or recommendations. In these exceptional circumstances we may recover funding that relates to a longer period, up to a maximum of seven years (including in relation to years when funding was provided by HEFCE).

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<sup>4</sup> Available at <https://www.hesa.ac.uk/innovation/newdlhe>.

<sup>5</sup> Available at [www.hesa.ac.uk/content/view/3685](http://www.hesa.ac.uk/content/view/3685).

# Annex A: Funding agreement between the OfS and an FEC: 1 April 2018 to 31 July 2019

1. This annex records the agreement between the Office for Students (OfS) and a further education college or sixth form college (FEC) relating to the amount of recurrent funding which the OfS will provide to the institution for the period 1 April 2018 to 31 July 2018 and 1 August 2018 to 31 July 2019. The amount of funding will be notified in writing to each FEC separately. This annex sets out certain conditions the FEC is expected to meet in return for that funding and must be read in conjunction with the rest of this document.
2. This annex specifies the conditions of funding that apply for the period:
  - 1 April to 31 July 2018
  - 1 August 2018 to 31 July 2019.
3. An institution must include all its registered students for the institution's reporting obligations relating to students under paragraph 33 and for the purposes of the Unistats data collection under the terms and conditions of OfS funding and this funding agreement.

## Institution

4. 'Institution' means the institution including its related undertakings (as defined in Annex C), unless such undertakings:
  - are subject to a separate funding agreement directly with the OfS
  - are subject to separate terms and conditions of UK Research and Innovation funding in relation to funds administered by Research England
  - have been designated by the Secretary of State as institutions in the further education sector which have their own contract with the Education and Skills Funding Agency (ESFA) or
  - are schools as defined by section 4 of the Education Act 1996 or multi-academy trusts.
5. FECs that we fund are subject to the funding agreement issued by the ESFA<sup>6</sup> that sets out the financial relationship between the FEC and the ESFA and covers the responsibilities for public accountability over funds received.
6. The OfS and the ESFA may share data and institutional risk information concerning FECs.
7. Institutions are bound by the requirements of their instruments and articles of governance and by rules relating to their charitable status. This document does not supersede those requirements but is intended to complement and reinforce them.

## Contributing to meeting policy objectives

8. The nursing and allied health supplement within teaching grant, shown on 2017-18 grant Table B issued by the Higher Education Funding Council for England (HEFCE) and the nursing, midwifery and allied health supplement shown on the 2018-19 grant Table A issued by the OfS,

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<sup>6</sup> At the time of writing, the ESFA's most recent funding agreements with colleges are available at <https://www.gov.uk/government/publications/esfa-funding-agreements-and-contracts-2017-to-2018>.

is conditional on institutions maintaining their current provision of pre-registration courses for the professions that attract this funding. Those professions are, for both undergraduate and (from 2018-19) postgraduate courses: adult, mental health, child, learning disability and other (unclassified) nursing; therapeutic radiography; diagnostic radiography; podiatry and chiropody; orthoptics; prosthetics and orthotics; and speech and language therapy; and also from 2018-19 for postgraduate courses only: midwifery, dietetics, occupational therapy and physiotherapy. Institutions that discontinue their provision for any of these professions in a year for which this funding has been provided will lose their allocation of this funding and be required to repay all of it. Institutions in receipt of this funding may be asked to submit qualitative monitoring information on the use of the funds. This will complement our monitoring of activity in these subjects through ILR and HEIFES data.

## Conditions of grant on regulated fees

9. It is a condition of the teaching grant provided for the 2017-18 and 2018-19 academic years that the institution complies with tuition fee regulations and the terms of any access agreement in force as agreed with the Director of Fair Access to Higher Education or the OfS. The condition that applies for 2017-18 and 2018-19 and the action that may be taken for any breaches of that condition are provided at Annex B.

## Recurrent funding allocations for 2017-18 and 2018-19

10. The grant tables provided by HEFCE in July 2017, or as subsequently updated, show the allocations of recurrent funding for the institution for the period 1 August 2017 to 31 July 2018. HEFCE has paid a proportion of the total between August 2017 and March 2018 according to a monthly payment profile that it notified separately. The balance will be paid by the OfS. These allocations may be amended subsequently in the light of any data assurance work we carry out with individual institutions or other data amendments that we agree to accept.
11. The OfS expects to issue grant tables in May 2018, showing the allocations of recurrent teaching funding for the institution for the period 1 August 2018 to 31 July 2019. These allocations may be amended subsequently in the light of any data assurance work we carry out with individual institutions or other data amendments that we agree to accept.
12. If an institution does not have any OfS-fundable students in 2017-18 or 2018-19 then all recurrent and capital funding for teaching allocated for that year will be held back. The institution will also lose its automatic course designation for student support. Unless subsequently revised, 'OfS-fundable students' has the same meaning as 'HEFCE-fundable students' as defined in Annex F of 'HEIFES17' (HEFCE 2017/18, available at [www.hefce.ac.uk/pubs/year/2017/201718/](http://www.hefce.ac.uk/pubs/year/2017/201718/)), but from 1 August 2018 also includes those that come within the category of 'persons granted stateless leave and their family members'<sup>7</sup>.
13. If necessary, we will require a direct repayment of funding if future payments are insufficient to allow us to recover sums due back within the year.
14. We reserve the right to revise any allocation to take account of changes to the grant available to us from government, or where we believe the size of any allocation that we have announced has been affected by erroneous or incomplete data.

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<sup>7</sup> This category is defined in an amendment to the Education (Fees and Awards) (England) Regulations 2007 that has been made through Regulation 17 of statutory instrument 2018/137 ([www.legislation.gov.uk/uksi/2018/137/contents/made](http://www.legislation.gov.uk/uksi/2018/137/contents/made)).

## Changes to the grant available to us

15. The strategic guidance letter to OfS of 28 February 2018 from government<sup>8</sup> confirmed the funding available for the 2018-19 financial year (April to March). However it did not show any indicative funding for the 2019-20 financial year. The letter also identified the policies and priorities that should underpin our approach to funding.
16. In the light of the guidance letter, the OfS Board has confirmed funding for the period April 2018 to July 2018 and agreed 2018-19 academic year budgets. In doing so, it has had to make an assumption about the funding that might be available for the 2019-20 financial year, because of its four month overlap with the 2018-19 academic year. Any future changes to the grant made available to us by government for financial year 2018-19, or that we have assumed for financial year 2019-20, are likely to affect the funding we are able to distribute to institutions in the 2018-19 academic year, and this may include revising allocations after they have already been announced. Accordingly, institutions should plan their budgets prudently.

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<sup>8</sup> See 'Strategic guidance to the Office for Students: Priorities for financial year 2018-19'  
<https://www.officeforstudents.org.uk/advice-and-guidance/regulation/guidance-from-government/>.

## **Annex B: Conditions of grant regarding regulated fees**

1. In accordance with the Secretary of State's duty under section 23 of the Higher Education Act 2004, the Secretary of State will impose a condition on grants to the Office for Students (OfS) for the period from 1 April 2018 to 31 July 2019, requiring the OfS in turn to impose a condition throughout that period, in accordance with section 24 of that Act, on financial support given to the governing body of a relevant institution.
2. An equivalent condition has been imposed on grant made by the Secretary of State to the Higher Education Funding Council for England (HEFCE) in respect of the academic year 2017-18, and will continue to apply in relation to the remainder of that academic year. Pursuant to transitional arrangements<sup>9</sup> relating to the implementation of the Higher Education and Research Act 2017, from 1 April 2018 the OfS will carry out the former functions of HEFCE and the Director of Fair Access to Higher Education including those relating to the making and enforcing of grants. Accordingly, the condition of grant imposed on relevant institutions for the academic year 2017-18 will continue to apply, with references to HEFCE or to the Director having effect as if they were references to the OfS.
3. The condition that the OfS will impose on the governing body of each relevant institution is set out in paragraphs 4 onwards below. That condition must provide, in the event of a failure to comply with the condition, for the imposition of the financial requirements described in paragraphs 11 to 14, including the principles described in paragraphs 13 and 14. Terms defined in Part 3 of the Higher Education Act 2004 have the same meaning when used in this annex and certain key terms are further described below.

### **Condition to be imposed by the OfS on the governing body of each relevant institution**

4. It is a condition of grant that:
  - a. Where an institution has an approved plan ('the plan') by the Director of Fair Access to Higher Education or by the OfS applying to students studying in the academic year 2018-19, its governing body must secure that in respect of that academic year the fees payable by a qualifying person in connection with their undertaking a qualifying course do not exceed the limit (which must not exceed the higher amount) provided for in the plan for that course and for that academic year, and
  - b. The governing body must comply with the general provisions of the plan.
  - c. Where an institution does not have an approved plan for a student cohort in the academic year 2018-19, its governing body must secure that in respect of that academic year the fees payable by a qualifying person in connection with their undertaking a qualifying course do not exceed the basic amount.
5. 'Fees' has the meaning set out in Section 41 of the Higher Education Act 2004 and in the Education (Student Fees) (Exceptions) (England) Regulations 1999<sup>10</sup>, which continue to apply.

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<sup>9</sup> Subject to parliamentary scrutiny.

<sup>10</sup> Statutory Instrument 1999/2265.

For students starting pre-registration courses in nursing, midwifery and allied health professions on or after 1 August 2017, institutions should meet, and not charge students for, the costs of Disclosure and Barring Service checks, occupational health checks and the provision of uniforms, where these are required for their participation on a course or course placement.

6. Qualifying courses and persons have the meaning prescribed in the Student Fees (Qualifying Courses and Persons) (England) Regulations 2007, as amended<sup>11</sup>.
7. Details of the higher and basic amounts are outlined in paragraphs 8 to 10 below. For these purposes an 'eligible institution' means an institution listed in the Schedule to the Higher Education (Basic Amount) (England) Regulations 2016 and the Schedule to the Higher Education (Higher Amount) (England) Regulations 2016, each as amended<sup>12</sup>.
8. The prescribed amounts for 2018-19 for **students starting their full-time courses before 1 September 2012** reflect provisions in the Higher Education Act 2004 and are subject to overall limits set out in the Student Fees (Amounts) (England) Regulations 2004<sup>13</sup> as amended by Regulation 3 of the Student Fees (Basic and Higher Amounts) (Approved Plans) (England) (Amendment) Regulations 2012<sup>14</sup>. For these courses:
  - a. The basic amount is £1,380 (£680 where Regulation 5 of the Student Fees (Amounts) (England) Regulations 2004 applies).
  - b. The higher amount is £3,465 (£1,725 where Regulation 5 of the Student Fees (Amounts) (England) Regulations 2004 applies).
9. For **students starting full-time courses on or after 1 September 2012**<sup>15</sup>, for an academic year beginning on or after 1 August 2017, the prescribed amounts are subject to overall limits that are set out in regulation 6 of the Higher Education (Basic Amount) (England) Regulations 2016 and regulation 6 of the Higher Education (Higher Amount) (England) Regulations 2016. For these courses, the basic amount is £6,165 for an eligible institution and £6,000 for any other institution and the higher amount is £9,250 for an eligible institution and £9,000 for any other institution, except where any of the following exceptions apply under regulation 7 of both sets of regulations:
  - a. The basic amount is £3,080 for an eligible institution and £3,000 for any other institution and the higher amount is £4,625 for an eligible institution and £4,500 for any other

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<sup>11</sup> Statutory Instrument 2007/778, which has been amended, at the time of writing by Statutory Instruments 2007/2263, 2008/1640, 2011/87, 2012/1653 and 2016/584 and further amended (in relation to 'persons granted stateless leave and their family members') for 2018-19 by Statutory Instrument 2018/137.

<sup>12</sup> Statutory instruments 2016/1205 and 2016/1206 respectively. The Schedules to both instruments, which identify eligible institutions, are due to be updated ahead of Academic Year 2018-19, subject to parliamentary scrutiny. A list of institutions with a TEF award for 2018-19 has been published on HEFCE's website at [www.hefce.ac.uk/tefoutcomes/#/](http://www.hefce.ac.uk/tefoutcomes/#/).

<sup>13</sup> Statutory Instrument 2004/1932.

<sup>14</sup> Statutory Instrument 2012/433.

<sup>15</sup> Certain students, such as those transferring or on 'end-on' courses, are treated differently and the details are set out in regulation 5 of the Higher Education (Higher Amount) (England) Regulations 2016 and regulation 5 of the Higher Education (Basic Amount) (England) Regulations 2016.

institution for the final academic year of a course where that academic year is normally required to be completed after less than 15 weeks' attendance.

- b. The basic amount is £920 for an eligible institution and £900 for any other institution and the higher amount is £1,385 for an eligible institution and £1,350 for any other institution for:
  - i. An Erasmus year<sup>16</sup>.
  - ii. An academic year of a course provided in conjunction with an overseas institution which is not an Erasmus year:
    - 1) During which any periods of full-time study at the institution in the UK are in aggregate less than 10 weeks.

Or

  - 2) If in respect of that academic year and any previous academic years of the course the aggregate of any one or more periods of attendance which are not periods of full-time study at the institution in the UK (disregarding intervening vacations) exceeds 30 weeks.
- c. The basic amount is £1,230 for an eligible institution and £1,200 for any other institution and the higher amount is £1,850 for an eligible institution and £1,800 for any other institution for an academic year of a sandwich course (which is not an Erasmus year):
  - i. During which any periods of full-time study are in aggregate less than 10 weeks.

Or

  - ii. If in respect of that academic year and any previous academic years of the course the aggregate of any one or more periods of attendance which are not periods of full-time study at the institution (disregarding intervening vacations) exceeds 30 weeks.

- 10. For **students starting part-time courses on or after 1 September 2012**<sup>17</sup>, for an academic year beginning on or after 1 August 2017, the prescribed amounts are subject to overall limits that are set out in regulation 8 of the Higher Education (Basic Amount) (England) Regulations 2016 and regulation 8 of the Higher Education (Higher Amount) (England) Regulations 2016. For these courses, the basic amount is £4,625 for an eligible institution and £4,500 for any other institution and the higher amount is £6,935 for an eligible institution and £6,750 for any other institution.

## Financial requirements and penalties

- 11. Where there is a failure to comply with the condition set out in paragraph 4.a above, the financial requirement in relation to fees charged which exceed the limit provided for in the plan but do not exceed the higher amount, will be that imposed in accordance with section 37(1)(a)

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<sup>16</sup> 'Erasmus year' is defined in Regulation 4 of Statutory Instrument 2013/1728, which amends the definition given in the Education (Student Support) Regulations 2011 (Statutory Instrument 2011/1986).

<sup>17</sup> Certain students, such as those transferring or on 'end-on' courses, are treated differently and the details are set out in Regulation 5 of the Higher Education (Higher Amount) (England) Regulations 2016 and Regulation 5 of the Higher Education (Basic Amount) (England) Regulations 2016.

of the Higher Education Act 2004 and the Student Fees (Approved Plans) (England) Regulation 2004<sup>18</sup> ('the Approved Plans Regulations').

12. Where there is a failure to comply with the condition set out in paragraph 4.b above, the financial requirement will be that imposed in accordance with section 37(1)(a) of the Higher Education Act 2004 and the Approved Plans Regulations.
13. Where there is a failure to comply with the condition set out in paragraph 4.a above, and the fees charged exceed the higher amount as well as the amount provided for in the plan, the financial requirement will be that imposed under paragraph 11 and, in addition, the amount determined by the OfS in accordance with the following principles:
  - a. An amount of the teaching grant from the OfS which in the opinion of the OfS equals 110 per cent of the amount each student on a course has been charged in excess of the relevant higher amount, multiplied by the number of students the OfS believes to have been overcharged.
  - b. That the amount determined under sub-paragraph a will be repaid by the institution to the OfS, or withheld from grant, and retained until the institution has satisfied the OfS that reasonable efforts have been made to repay the amount charged in excess of the higher amount, either to every qualifying person overcharged, or to the Student Loans Company, as the case may be. Once the OfS is so satisfied by a date it determines, the amount retained by the OfS, or a proportion of that amount, will be repaid or given in grant to the institution.
  - c. The following further principles also apply:
    - i. Where it appears to the OfS that an institution does not intend to comply with the higher amount fee cap, an amount up to the maximum of the total teaching grant from the OfS for the relevant academic year and any future grant period may be withheld from grant.
    - ii. Where it appears to the OfS that a breach of the higher amount fee cap is minor or accidental there will be no financial penalty additional to that set out in sub-paragraphs a and b, and
    - iii. In any other circumstances, an amount in the current grant period which the OfS considers appropriate in view of the severity of the failure to comply with the higher amount fee cap, up to a maximum of £500,000 less any amount already imposed by the OfS under paragraph 11, to be repaid by the institution to the OfS or withheld from grant.
  - d. An amount determined under sub-paragraph c will not exceed in any grant period the total amount received from the OfS in that grant period, less any amount withheld under sub-paragraphs a and b and the amount of any financial requirement imposed under paragraphs 11 or 12. An amount determined under sub-paragraph c will not be paid or repaid to the institution.

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<sup>18</sup> Statutory Instrument 2004/2473, as amended, at the time of writing, by Statutory Instruments 2012/433 and 2012/765.



14. Where there is a failure to comply with the condition under paragraph 4.c, the financial requirement will be the amount determined by the OfS in accordance with the following principles:
- a. An amount of the teaching grant from the OfS which in the opinion of the OfS equals 110 per cent of the amount each student on a course has been charged in excess of the basic amount, multiplied by the number of students the OfS believes to have been overcharged.
  - b. That the amount determined under sub-paragraph a will be repaid by the institution to the OfS or withheld from grant, and retained until the institution has satisfied the OfS that reasonable efforts have been made to repay the amount charged in excess of the basic amount, either to every qualifying person overcharged, or to the Student Loans Company, as the case may be. Once the OfS is so satisfied by a date it determines, the amount retained, or a proportion of that amount, will be returned or given in grant to the institution.
  - c. The following further principles also apply:
    - i. Where it appears to the OfS that an institution does not intend to comply with the basic amount fee cap, an amount up to the maximum of the total teaching grant from the OfS for the relevant academic year and any future grant period may be withheld from grant.
    - ii. Where it appears to the OfS that a breach of the basic amount fee cap is minor or accidental there will be no financial penalty additional to that set out in sub-paragraphs a and b, and
    - iii. In any other circumstances, an amount in the current grant period which the OfS considers appropriate in view of the severity of the failure to comply with the basic amount fee cap, up to a maximum of £500,000, to be repaid by the institution to the OfS or withheld from grant.
  - d. An amount determined under sub-paragraph c will not exceed in any grant period the total amount received from the OfS in that grant period, less any amount withheld under sub-paragraphs a and b. An amount determined under sub-paragraph c will not be paid or repaid to the institution.

## Annex C: Related undertakings

1. 'Institution' means the institution including its related undertakings, as defined in paragraphs 2 and 3, unless such undertakings:
  - a. Are subject to a separate funding agreement directly with the Office for Students (OfS).
  - b. Have been designated by the Secretary of State as institutions in the further education sector which have their own contract with the Education and Skills Funding Agency or
  - c. Are schools as defined by section 4 of the Education Act 1996 or multi-academy trusts.
2. An 'undertaking' includes a body corporate, a partnership, an unincorporated association or a trust. An undertaking will normally be regarded as a related undertaking of the institution if any of the following apply:
  - a. The institution controls that undertaking.
  - b. The institution and another undertaking or other undertakings related to the institution together control that undertaking.
  - c. Another undertaking or other undertakings related to the institution control that undertaking.
  - d. That undertaking is recognised by the OfS as a 'connected institution', as defined by section 27 of the Teaching and Higher Education Act 1998.
  - e. We consider that the sole purpose, or one of the main purposes, of registering students at that undertaking is to avoid or minimise regulation by OfS, to optimise funding or to manipulate data for regulatory or other purposes.
  - f. We consider that the undertaking was established by or is operated for the primary benefit of the institution.
3. The OfS may, at its discretion, decide to treat a related undertaking as a separate institution for funding, regulatory and other purposes if they consider that the undertaking has a separate historic identity from its parent institution.
4. For the purpose of paragraph 2, an undertaking is under the 'control' of another if any of the following apply<sup>19</sup>:
  - a. That other holds or is entitled to acquire a majority of the shares in the undertaking.
  - b. That other holds or is entitled to acquire a majority of the voting rights in the undertaking.
  - c. That other has or is entitled to acquire the right to appoint or remove a majority of the board of directors or other governing body of the undertaking.
  - d. That other has or is entitled to acquire the right to exercise dominant influence over the undertaking by virtue of provisions contained in the undertaking's articles of association or any other constitution, control contract, memorandum of understanding or other document regulating the undertaking or any other undertaking.

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<sup>19</sup> The expressions 'voting rights in an undertaking', 'right to appoint or remove a majority of the directors', 'right to exercise a dominant influence' and 'control contract' have the meanings given in schedule 7 to the Companies Act 2006.

- e. That other 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, of the undertaking.
  - f. Both are in common or overlapping ownership or are managed on a uniform basis or have a significant number of directors (or equivalent) or senior management in common.
  - g. That other has or is entitled to acquire the power, by any other means, to secure that the affairs of the undertaking are conducted in accordance with its wishes, or the undertaking is habitually conducted in accordance with the wishes of the other.
5. Where a school (as defined in paragraph 1) or multi-academy trust is under the control of the institution and delivers higher education (HE), the expectation is that higher education students would be reported through the institution, but students not studying at higher education level in school would be excluded.
6. Where a student union is under the control of the institution, it is excluded from the definition of related undertakings, except where it delivers higher education.

## Annex D: Definitions and abbreviations

<b>Accountable officer</b>	A senior officer (normally the head) of an institution responsible and accountable to the OfS (and ultimately to Parliament) for ensuring that the institution uses OfS funds in ways that are consistent with the purposes for which those funds were given, and complies with the conditions attached to them. These include the conditions set out in the Further and Higher Education Act 1992 and in these terms and conditions.
<b>Accounting officer (of the OfS)</b>	As accounting officer, the chief executive of the OfS has a personal responsibility to safeguard public funds and achieve value for money as set out in HM Treasury guidance, 'Managing Public Money' and any subsequent guidance. This includes responsibility for the public funds allocated by the OfS to higher and further education institutions and other bodies for education and associated purposes.
<b>ESFA</b>	Education and Skills Funding Agency
<b>FEC</b>	Further education or sixth form college
<b>Governing body</b>	The university council, board of governors or other body ultimately responsible for the management and administration of the institution's revenue and property, and the conduct of its affairs.
<b>HEFCE</b>	Higher Education Funding Council for England
<b>HERA</b>	Higher Education and Research Act 2017
<b>ILR</b>	Individual Learner Record
<b>JANET</b>	High-speed computer network supported by all the four higher and further education funding bodies, which links universities and colleges in the UK. SuperJANET is the enhanced network.
<b>OfS</b>	Office for Students
<b>Regularity</b>	Regularity is a public finance requirement for funds to be applied only to the extent and for the purposes authorised by Parliament.
<b>Secretary of State</b>	Secretary of State for Education





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