

**Office for  
Students**



**Regulatory Notice 3:  
Regulation up to 31 July 2019  
of providers currently  
designated for student support by  
the Secretary of State**

**Guidance for providers during the transition  
period**

Reference **OfS 2018.13**

Enquiries to [regulation@officeforstudents.org.uk](mailto:regulation@officeforstudents.org.uk)

Date of publication **29 March 2018**



# **THE OFFICE FOR STUDENTS**

## **Regulatory notice 3: Regulation up to 31 July 2019 of providers currently designated for student support by the Secretary of State**

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

© **Office for Students** copyright **2018**

The text of this document (this excludes, where present, the Royal Arms and all departmental or agency logos) may be reproduced free of charge in any format or medium provided that it is reproduced accurately and not in a misleading context. The material must be acknowledged as Office for Students copyright and the document title specified.

Where third party material has been identified, permission from the respective copyright holder must be sought.

This publication is also available on our website at: <https://www.officeforstudents.org.uk/>

Any enquiries regarding this publication should be sent to us at Nicholson House, Lime Kiln Close, Stoke Gifford, Bristol, BS34 8SR or [info@officeforstudents.org.uk](mailto:info@officeforstudents.org.uk)

# Contents

<b>Introduction</b>	<b>5</b>
How the OfS and the DfE will work together during the transition period	6
<b>PART A: Regulatory requirements during the transition period</b>	<b>7</b>
<b>Section 1: Regulatory requirements during the transition period</b>	<b>7</b>
Criteria and conditions of specific course designation – Secretary of State’s existing requirements	7
OfS ongoing conditions of registration during the transition period – new requirements	8
<b>Section 2: Complying with the criteria and conditions of specific course designation</b>	<b>11</b>
Submission of information	11
Existing action plans	11
Role of the QAA during the transition period	11
Designation of a new course, location or campus location	12
Reporting a change of circumstance	12
<b>Section 3: Complying with the new conditions of registration</b>	<b>13</b>
Condition C1: Guidance on consumer protection law	13
Condition C3: Student protection plan	13
Condition E3: Accountability	14
Condition E4: Notification of changes to the Register	14
Condition F3: Provision of information to the OfS	15
Condition F4: Provision of information to the DDB	15
Condition Z2: Transition condition of registration	16
Specific ongoing conditions of registration	16
<b>Section 4: Complying with other legal requirements</b>	<b>17</b>
The Prevent duty	17
<b>PART B: The DfE’s and the OfS’s approach to regulation during the transition period</b>	<b>18</b>
<b>Section 5: Assessing compliance with the criteria and conditions of specific course designation</b>	<b>18</b>
Annual monitoring exercise	18
Monitoring student outcomes	18
Change of circumstances	18
QAA reviews, annual monitoring and concerns process	19
Ongoing engagement activity	19
<b>Section 6: Actions under the DfE’s regulatory requirements for specific course designation</b>	<b>20</b>

Interventions	20
<b>Section 7: Assessing compliance with the new conditions of registration</b>	<b>22</b>
<b>Section 8: Actions under the new conditions of registration</b>	<b>23</b>
Interventions	23
Formal sanctions	23
<b>PART C: Annexes</b>	<b>25</b>
Annex A: Condition Z2: Transition ongoing condition of registration	25
Annex B: Data returns	27
Annex C: Annual monitoring exercise	29
Annex D: Reportable events	33
Annex E: Investigations	36

# Introduction

1. This regulatory notice sets out how providers will be regulated between 1 April 2018 and 31 July 2019. It applies to a provider that expects to register, or has registered, with the Office for Students (OfS) and is:
  - An English<sup>1</sup> provider designated for student support for undergraduate or postgraduate courses by the Secretary of State and regulated by the Department for Education (the DfE) in 2017-18 and 2018-19 (sometimes referred to as an 'alternative provider').
  - An English provider designated for the Disabled Students Allowance (DSA) by the Secretary of State and regulated by the DfE in 2017-18 and 2018-19.
2. The guidance is intended to ensure that providers understand:
  - the regulatory requirements in place from 1 April 2018 to 31 July 2019
  - how to comply with these requirements
  - how the OfS and the DfE will work together to regulate providers during this period.
3. This guidance constitutes material published by the OfS under section 75 of the Higher Education and Research Act 2017 (HERA) and should be read in conjunction with:
  - The regulatory framework (OfS 2018.01), which sets out in full the approach to registration and regulation. If there are any inconsistencies between the regulatory framework and this document then the regulatory framework will prevail.
  - The DfE's specific course designation guidance – policy and guidance for alternative providers of higher education: criteria and conditions (<https://www.gov.uk/government/publications/specific-course-designation-alternative-higher-education-providers>). Or any other conditions specified in writing by the DfE relating to an individual provider.
4. Providers that are funded by the Higher Education Funding Council for England (HEFCE) or by the OfS during 2017-18 or 2018-19, can find guidance about how they will be regulated between 1 April 2018 and 31 July 2019 in a separate regulatory notice (regulatory notice 2, OfS 2018.12).
5. New providers not currently funded by HEFCE, or regulated by the DfE, can find information about how they will be regulated between 1 April 2018 and 31 July 2019 in a separate regulatory notice (regulatory notice 4, OfS 2018.14).
6. A provider that is designated for student support for undergraduate or postgraduate courses by the Secretary of State and regulated by the DfE in 2017-18 or 2018-19 and that is unsuccessful in its application to register with the OfS (or that did not apply for registration) will continue to be subject to the DfE's criteria and conditions of specific course designation for 2018-19. Students

---

<sup>1</sup> Providers based outside England with specific course designation so that students domiciled in England can access the student support system for their courses will be contacted by the DfE about the arrangements that will be in place from 1 April 2018.

claiming student support and continuing study beyond 31 July 2019 may be able to complete their course if the provider satisfies the DfE's requirements for 'teach out' arrangements. The DfE will communicate with such providers separately about this, including to set out the requirements and monitoring arrangements that would apply.

7. The approach that the OfS has taken to the transition period is designed to deliver an equivalent regulatory effect for providers subject to different regulatory regimes: all providers will be subject to some OfS conditions of registration from the date that they are registered and these are more extensive for those providers that are not currently regulated through other means.

## **How the OfS and the DfE will work together during the transition period**

8. This regulatory notice does not supersede, or in any way replace, the guidance issued by the DfE that sets out the criteria and conditions of specific course designation in the period to 31 July 2019. Where the DfE's guidance is referred to in this document it is to help providers to understand how the two regulatory systems will work together during the transition period.
9. Once a provider has registered, the OfS and the DfE will each be responsible for regulating it in accordance with their respective legal powers and duties. The two regulators will share information so that the regulatory burden on providers can be minimised.
10. During the transition period, the DfE will regulate providers in accordance with the criteria and conditions of specific course designation. The OfS will support the DfE by collecting data and information for monitoring purposes and will provide advice to the DfE about providers' compliance with the criteria and conditions of specific course designation. It is for the Secretary of State to decide what action, if any, to take following receipt of the OfS's advice. In addition, the DfE may undertake its own activities, as it sees fit. The DfE will make decisions about a provider's specific course designation between 1 April 2018 and 31 July 2019. It will designate courses for 2018-19, and will monitor compliance with the criteria and conditions of designation during 2018-19, including by carrying out an annual monitoring exercise. If the DfE decides to remove specific course designation or to impose any other sanction, during this period, this will not necessarily mean that the OfS will apply one of its own sanctions.
11. The OfS will regulate providers in relation to the ongoing conditions of registration that are imposed from the date of a provider's registration. It will make decisions about a provider's continued registration from that date. If the OfS decides to take action to suspend or to remove a provider's registration, this will not necessarily mean that its specific course designation is removed, but it would mean that any new students from 1 August 2019 would not be eligible for student support. In these circumstances, the DfE will decide whether existing students are able to continue to receive student support to allow them to complete their courses.



# **PART A: Regulatory requirements during the transition period**

## **Section 1: Regulatory requirements during the transition period**

12. The OfS's regulatory framework, published in February 2018 (OfS 2018.01) will not come fully into force until 1 August 2019. Up to 31 July 2019, providers will be designated and regulated by the DfE under the Secretary of State's powers<sup>2</sup>. The OfS will provide advice to the DfE about a provider's compliance with the criteria and conditions of specific course designation, and will do this on the same basis as HEFCE has done in previous years.
13. This means that providers subject to this regulatory notice will be regulated from 1 April 2018 to 31 July 2019 through a combination of the OfS's new HERA powers and duties and the Secretary of State's powers to designate courses. This is called the 'transition period'.
14. The following regulatory requirements will apply from 1 April 2018:
  - a) Criteria and conditions of specific course designation imposed by the Secretary of State.
15. In addition, the following regulatory requirements will apply once a provider is registered by the OfS under its new powers:
  - a) A set of general ongoing conditions of registration that will be applied when a provider is registered.
  - b) Any specific conditions of registration that are applied when a provider is registered.
16. If a provider chooses not to register, or is unsuccessful in its application for registration, it will still need to comply with the criteria and conditions of specific course designation up to 31 July 2019. In these circumstances the DfE would communicate with a provider about further arrangements.

### **Criteria and conditions of specific course designation – Secretary of State's existing requirements**

17. The guidance published by the Secretary of State for Education<sup>3</sup> sets out the criteria and conditions for specific course designation. Providers should refer to this guidance, and any

---

<sup>2</sup> Under the Education (Student Support) Regulations 2011 (as amended). Or, for postgraduate master's courses, the Education (Postgraduate Master's Degree Loans) Regulations 2016 (SI 2016 No.606) as amended by the Education (Postgraduate Master's Degree Loans)(Amendment) Regulations 2017 (SI 2017 No.594).

<sup>3</sup> Specific course designation guidance – policy and guidance for alternative providers of higher education: criteria and conditions - <https://www.gov.uk/government/publications/specific-course-designation-alternative-higher-education-providers>

relevant communications from the DfE, for information about these criteria and conditions and what they will need to do to comply with them.

## OfS ongoing conditions of registration during the transition period – new requirements

18. When a provider is registered by the OfS, a number of ongoing conditions of registration will be imposed. Most of these conditions will apply from 1 August 2019. However, some of these conditions will apply from the date that a provider is first registered. These are set out below. The OfS may take action if a provider breaches any of these conditions of registration and the actions that may be taken are set out in section 8 below.

### General ongoing conditions of registration

19. The following general ongoing conditions of registration will be applied from the date that a provider is first registered:

General ongoing conditions of registration	
Condition C1 Guidance on consumer protection law	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.
Condition C3 Student protection plan	The provider must: <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 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>
Condition E3 Accountability	The governing body of the provider must: <ol style="list-style-type: none"> <li>i. Accept responsibility for the interactions between the provider and the OfS and its designated bodies.</li> <li>ii. Ensure the provider's compliance with all of its conditions of registration and with the OfS's accounts direction.</li> <li>iii. Nominate to the OfS a senior officer as the 'accountable officer' who has the responsibilities set out by the OfS for an accountable officer from time to time.</li> </ol>
Condition E4 Notification of changes to the Register	The governing body of the provider must notify the OfS of any change of which it becomes aware which affects the accuracy of the information contained in the provider's entry in the Register.

<p>Condition F3</p> <p>Provision of information to the OfS</p>	<p>For the purposes of assisting the OfS in performing any function, or exercising any power, conferred on the OfS under any legislation, the governing body of a provider must:</p> <ul style="list-style-type: none"> <li>i. Provide the OfS or a person nominated by the OfS, with such information as the OfS specifies at the time and in the manner and form specified.</li> <li>ii. Permit the OfS to verify, or arrange for the independent verification by a person nominated by the OfS, of such information as the OfS specifies at the time and in the manner specified and must notify the OfS of the outcome of any independent verification at the time and in the manner and form specified.</li> <li>iii. Take such steps as the OfS reasonably requests to co-operate with any monitoring or investigation by the OfS, in particular, but not limited to, providing explanations or making available documents to the OfS or a person nominated by it or making available members of staff to meet with the OfS or a person nominated by it.</li> </ul> <p>The requirements in paragraphs (ii) and (iii) do not affect the generality of the requirement in paragraph (i).</p>
<p>Condition F4</p> <p>Provision of information to the DDB</p>	<p>For the purposes of the designated data body (DDB)'s duties under sections 64(1) and 65(1) of HERA, the provider must provide the DDB with such information as the DDB specifies at the time and in the manner and form specified by the DDB.</p>

20. Guidance about these ongoing conditions of registration is found in part V of the regulatory framework (OfS 2018.01).

### Specific ongoing conditions of registration

21. When a provider satisfies the initial conditions of registration, the OfS will undertake a risk assessment to determine the extent of the risk that the provider will breach one or more of its ongoing conditions. Where the OfS considers that there is increased risk of such a breach, it may impose one or more specific conditions of registration. Specific conditions of registration will be tailored to a provider's circumstances and to the particular extent and nature of the risk that the OfS is seeking to mitigate. A provider will be informed about the imposition of any specific conditions of registration when it is told about the outcome of its application for registration.
22. From the date of a provider's registration, it must ensure that it satisfies any specific conditions that have been applied. The OfS may take action if a provider breaches any of these conditions and the actions that may be taken are set in section 8 below.

### Transition period condition of registration

23. Each registered provider will also need to satisfy a further condition of registration for the transition period from the date of its registration to 31 July 2019.

<p>Condition Z2</p> <p>Transition period condition</p>	<p>During the transition period, the provider must comply with the criteria and conditions of specific course designation imposed by the Secretary of State.</p>
--	--

24. This condition allows the OfS to take action under its new powers if a provider is in breach of any of the criteria and conditions of specific course designation. This means that for a very serious breach of this condition the OfS may take action to suspend a provider's registration or to deregister it. This would be in addition to, or alongside, any action that the DfE has decided to take.
25. Guidance about this condition of registration is found in Annex A.

## Section 2: Complying with the criteria and conditions of specific course designation

### Submission of information

26. This section sets out the information providers will need to submit during the transition period to satisfy the DfE that they continue to meet the criteria and conditions of specific course designation.
27. A provider designated for student support purposes under specific course designation will need to:
  - a) Submit the data returns set out in Annex B that apply to it.
  - b) Submit the monitoring returns set out in Annex C that apply to it.
28. A provider designated for the Disabled Students Allowance will need to:
  - a) Submit any changes to validation arrangements since August 2017, including any reviews or renewals of these, by 20 October 2018.
  - b) Submit any previously unreported changes of circumstance under its conditions of specific course designation by 20 October 2018.
29. The OfS will publish more information about how to submit these in the summer 2018.

### Existing action plans

30. A provider will need to continue to implement any action plan that is in place as a result of:
  - a) A Higher Education Review (HER(AP)), annual monitoring, and/or concerns investigation by the Quality Assurance Agency for Higher Education (QAA).
  - b) An Improvement Notice from the DfE, which may refer to actions the DfE requires a provider to take, or any other action plan issued to a provider by the DfE.
31. Part B provides more information about how the DfE will monitor the progress a provider is making on the implementation of an action plan or actions required by an Improvement Notice.

### Role of the QAA during the transition period

32. A provider will need to maintain its relationship with the Quality Assurance Agency for Higher Education (QAA) during the transition period. This includes, but is not limited to:
  - implementing any action plan that is in place
  - meeting requirements for the QAA's annual quality monitoring process
  - meeting requirements for any QAA reviews that may be required to demonstrate compliance with the quality assurance criteria for specific course designation
  - cooperating with any investigation under the QAA's Concerns Scheme

- paying subscription or review fees. If a provider does not pay such fees the DfE may consider that it has breached its conditions of specific course designation.

## Designation of a new course, location or campus location

33. A provider will need to apply for designation of any new courses, locations or campus locations if it wants its students to be able to access student support for these during 2018-19. A provider will need DfE's approval if it wants to:
- a) Register a new course at a location, or at multiple locations, that have existing specific course designation.
  - b) Apply for a new location to be designated for student support.
  - c) Apply for a new location to be designated for student support and new courses at that location.
  - d) Replace existing Higher National (HN) courses that are designated for student support under the 'one-in, one-out' policy. See page 17 of the DfE's guidance<sup>4</sup>.
34. For the changes to designation listed in a)-d) above a provider will need to complete the template published at [www.officeforstudents.org.uk/#documents](http://www.officeforstudents.org.uk/#documents) and email to the OfS at [regulation@officeforstudents.org.uk](mailto:regulation@officeforstudents.org.uk). The OfS will assess the application and provide advice to the DfE. The DfE will decide whether to approve the application and inform the provider of the outcome.
35. There is a different process set out in the next section below if a provider wishes to:
- a) Change an existing location for another.
  - b) Make small changes to the title of a course where there is no substantial effect on the course design or structure.

## Reporting a change of circumstance

36. A provider must inform the OfS about any change of circumstance as soon as reasonably possible, once it is aware of the event. These are set out in Annex D of the DfE's guidance<sup>5</sup>. This is a requirement of the DfE's conditions of specific course designation and is separate from, and in addition to, the OfS's requirement that providers notify it about the reportable events set out in Annex D of this document. Although there is overlap between the items listed in DfE's change of circumstance requirements and the OfS's reportable events, they are not exactly the same.
37. A provider will need to report anything on the DfE's list to the OfS, and the OfS will report the event to the DfE. The DfE may consider a failure to report a change of circumstance to be a breach of the criteria and conditions of specific course designation.

---

<sup>4</sup> <https://www.gov.uk/government/publications/specific-course-designation-alternative-higher-education-providers>

<sup>5</sup> <https://www.gov.uk/government/publications/specific-course-designation-alternative-higher-education-providers>

## Section 3: Complying with the new conditions of registration

38. Section 1 above sets out the ongoing conditions of registration that will apply once a provider is registered under the OfS's new powers. The action a provider will need to take to satisfy these conditions during the transition period is set out below.
39. If the OfS considers that a provider does not satisfy any of these ongoing conditions of registration, or considers that there is an increased risk of a breach of one or more of them, it may take action. More information about this is set out in section 8 below.

### Condition C1: Guidance on consumer protection law

Condition C1	The provider must demonstrate that in developing and implementing its policies, procedures and terms and conditions, it has given due regard to relevant guidance about how to comply with consumer protection law.
--------------	---

40. Once registered a provider will need to continue to satisfy this condition. Full guidance can be found in part V of the regulatory framework.

### Condition C3: Student protection plan

Condition C3	<p>The provider must:</p> <ul 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 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></ul>
--------------	---

41. As part of the registration process the OfS will approve a provider's student protection plan (SPP). Once registered, the provider will need to continue to satisfy this condition. Full guidance can be found in part V of the regulatory framework.

## Condition E3: Accountability

Condition E3	<p>The governing body of the provider must:</p> <ul style="list-style-type: none"><li>i. Accept responsibility for the interactions between the provider and the OfS and its designated bodies.</li><li>ii. Ensure the provider's compliance with all of its conditions of registration and with the OfS's accounts direction.</li><li>iii. Nominate to the OfS a senior officer as the 'accountable officer' who has the responsibilities set out by the OfS for an accountable officer from time to time.</li></ul>
--------------	---

- 42. This condition of registration requires a provider to comply with the OfS's accounts direction which the OfS will publish in spring 2018.
- 43. As part of the registration process the OfS will approve the senior officer that a provider nominates as its 'accountable officer'. It is likely that this will be the same person who is the accountable officer under the conditions of the provider's specific course designation.
- 44. The OfS will publish guidance about the responsibilities of accountable officers and the action a provider must take if it needs to report any change.
- 45. The full guidance on this ongoing condition of registration can be found in part V of the regulatory framework.

## Condition E4: Notification of changes to the Register

Condition E4	<p>The governing body of the provider must notify the OfS of any change of which it becomes aware which affects the accuracy of the information contained in the provider's entry in the Register.</p>
--------------	--

- 46. Following the publication of a provider's entry in the Register, it must report any change which affects the accuracy of information contained in this entry. A provider must report such changes by email to [regulation@officeforstudents.org.uk](mailto:regulation@officeforstudents.org.uk).
- 47. Full guidance on this ongoing condition of registration can be found in part V of the regulatory framework.



### Condition F3: Provision of information to the OfS

Condition F3	<p>For the purposes of assisting the OfS in performing any function, or exercising any power, conferred on the OfS under any legislation, the governing body of a provider must:</p> <ul style="list-style-type: none"><li>i. Provide the OfS or a person nominated by the OfS, with such information as the OfS specifies at the time and in the manner and form specified.</li><li>ii. Permit the OfS to verify, or arrange for the independent verification by a person nominated by the OfS, of such information as the OfS specifies at the time and in the manner specified and must notify the OfS of the outcome of any independent verification at the time and in the manner and form specified.</li><li>iii. Take such steps as the OfS reasonably requests to cooperate with any monitoring or investigation by the OfS, in particular, but not limited to, providing explanations or making available documents to the OfS or a person nominated by it or making available members of staff to meet with the OfS or a person nominated by it.</li></ul> <p>The requirements in paragraphs (ii) and (iii) do not affect the generality of the requirement in paragraph (i).</p>
--------------	---

- 48. Once a provider is registered it must continue to satisfy this condition. This includes reporting any of the reportable events listed in Annex D. Providers are able to do this by email to [regulation@officeforstudents.org.uk](mailto:regulation@officeforstudents.org.uk).
- 49. The full guidance on this ongoing condition of registration can be found in part V of the regulatory framework.

### Condition F4: Provision of information to the DDB

Condition F4	<p>For the purposes of the designated data body (DDB)'s duties under sections 64(1) and 65(1) of HERA, the provider must provide the DDB with such information as the DDB specifies at the time and in the manner and form specified by the DDB.</p>
--------------	--

- 50. This condition of registration must be applied as soon as a provider is registered because it is listed in HERA as a mandatory condition of registration. However, the OfS does not expect to require providers to provide information to the DDB under this condition during the transition period, as the OfS will not have asked the DDB to commence data collection and publication under sections 64 and 65 of HERA until it has published its data strategy later in 2018. These information requirements will commence from 1 August 2019.
- 51. During the transition period, a provider will need to continue to submit data returns to the organisations required under the criteria and conditions of specific course designation as set out in Annex B.
- 52. The full guidance on this ongoing condition of registration can be found in part V of the regulatory framework.

## Condition Z2: Transition condition of registration

Condition Z2	During the transition period, the provider must comply with the criteria and conditions of specific course designation imposed by the Secretary of State.
--------------	---

53. Section 1 sets out the regulatory requirements that a provider will need to satisfy from 1 April 2018 under the criteria and conditions of specific course designation imposed by the Secretary of State. Once a provider is registered under the OfS's new powers, any breach of those criteria and conditions may also constitute a breach of this ongoing condition of registration.
54. Where the DfE identifies that a provider has breached the criteria and conditions of specific course designation, the OfS may use this information to assess whether there is an increased risk of a breach of this condition of registration. This may relate to risks to the provider's financial sustainability, the quality and standards of its courses, or to its management and governance arrangements. Where this is the case, the OfS may decide to impose a specific ongoing condition of registration.
55. The full guidance on this ongoing condition of registration can be found in Annex A.

### Specific ongoing conditions of registration

56. A provider may have one or more specific ongoing conditions of registration imposed when it is registered. A provider will be told what it is required to do to satisfy these and will need to take action and provide any information the OfS has asked for during the transition period.

## Section 4: Complying with other legal requirements

57. Providers will need to continue to comply with all of the legal obligations that they already have as these have not changed. Providers' attention is drawn to those obligations in which the OfS has a role, as set out below.

### The Prevent duty

58. From 1 April 2018, the OfS will take on responsibility as 'monitoring authority' of the 'Prevent duty' in the higher education sector as set out in the Counter Terrorism and Security Act 2015 (CTSA). Providers designated for student support by the Secretary of State are already subject to the Prevent duty. During the transition period, this will continue to be the case whether a provider is registered by the OfS or not. This means that any provider that is not registered but remains designated for student support by the Secretary of State (for the purposes of 'teach out', for example) will also be subject to the Prevent duty.
59. From 1 August 2019, the definition of a 'qualifying institution' that is subject to the Prevent duty (set out in section 11 of the Higher Education Act 2004) will be updated to refer to 'an institution in England which is a registered higher education provider' (as defined under section 85 of HERA). This definition will apply to all providers registered with the OfS. The Prevent duty will also continue to apply to those providers not registered with the OfS, but that have over 250 higher education students, and all the autonomous colleges, schools and halls of the universities of Cambridge, Durham and Oxford.
60. The OfS will continue to build on the Prevent monitoring framework that was established by HEFCE. Further information about reporting requirements, and the action that will be taken if a provider fails to comply, are set out in the Prevent monitoring framework available at [www.officeforstudent.org.uk/#documents](http://www.officeforstudent.org.uk/#documents). Any potential Prevent related serious incidents should also continue to be reported to the Prevent team.

# **PART B: The DfE's and the OfS's approach to regulation during the transition period**

## **Section 5: Assessing compliance with the criteria and conditions of specific course designation**

61. From 1 April 2018, the DfE will still need to confirm that a provider satisfies the criteria and conditions placed on its specific course designation for student support. The DfE will decide whether a provider is complying with these criteria and conditions, and any consequences of non-compliance.
62. The DfE will do this on the basis set out in its guidance<sup>6</sup>. Providers should refer to the DfE's guidance, and any relevant communications from the DfE for information about these criteria and conditions and information about what they will need to do to comply with them.
63. The DfE will assess compliance through:
- An annual monitoring exercise
  - Monitoring student outcomes data
  - Considering the OfS's advice about any changes of circumstances
  - Considering the outcomes of QAA reviews, annual monitoring and the concerns process
  - Ongoing engagement with providers.
64. The evidence that the DfE will use for each of these is set out below.

### **Annual monitoring exercise**

65. The OfS will use the information set out in Annex C to provide an assessment to the DfE about the eligibility of a provider's courses, the quality of its provision, its financial sustainability, and management and governance arrangements. This is set out in Annex C of this regulatory notice and in the DfE's guidance.

### **Monitoring student outcomes**

66. A provider will need to submit the data returns set out in Annex B between 1 April 2018 and 31 July 2019 to enable the OfS to provide advice to the DfE.

### **Change of circumstances**

67. The OfS will provide the DfE with an assessment of any changes of circumstance submitted by a provider. The DfE will decide whether any changes should be made to the provider's specific course designation as a result of the OfS's assessment.
68. If a provider reports a change to its ownership or control, the OfS will provide an assessment to the DfE about the suitability of any new owners and any impact of the change on the provider's

---

<sup>6</sup> <https://www.gov.uk/government/publications/specific-course-designation-alternative-higher-education-providers>

financial sustainability and management and governance arrangements. The DfE will decide whether the provider continues to be designated for student support during 2018-19 and notify the provider of its decision.

## **QAA reviews, annual monitoring and concerns process**

69. The DfE will confirm that a provider continues to meet the quality criteria for specific course designation, and consider the outcomes of the QAA's quality reviews, annual monitoring activities, and any matters reviewed under the QAA's concerns process.

## **Ongoing engagement activity**

70. The DfE will continue to engage with providers in relation to matters that fall outside of routine annual monitoring activity, for example, if it wants to understand more about student recruitment, progression, non-continuation rates or the legitimacy of the qualifications of applicants. The DfE will also continue to investigate allegations that may suggest noncompliance with the criteria and conditions of specific course designation, including any concerns reported by whistle blowers or others. This work will be undertaken by the DfE's Alternative Provider Intelligence Unit and, when relevant, members of the OfS's staff will support this activity. The DfE may also involve the OfS or partner organisations such as validating or awarding bodies (e.g. Pearson) or the Student Loans Company in such investigations.

## Section 6: Actions under the DfE's regulatory requirements for specific course designation

71. The annual monitoring exercise in October 2018 will ensure that a provider continues to meet the criteria and conditions of specific course designation during the period to 31 July 2019. The DfE will inform a provider if it has identified concerns about its compliance with the criteria and conditions of specific course designation, and/or requires the provider to take any action.

### Interventions

72. The OfS and the DfE will share any information submitted by a provider. They will also share information about regulatory actions they are each taking and any investigations that they are undertaking. This will minimise regulatory duplication during the transition period and ensure that decisions are made on the basis of all the relevant information.
73. The OfS and the DfE will make their own decisions during the transition period, and it is possible that they will make different decisions. This is because there are different requirements for specific course designation and for registration and because they may be assessing these requirements in different ways, even where they may seem similar to a provider. The two regulators also have different legal powers and duties and this may affect the decisions that they each make.
74. Annex F of the DfE's guidance<sup>7</sup> sets out the sanctions that it may impose if a provider breaches the criteria and conditions of specific course designation, and the process by which it will do so. Withdrawal of student support finance continues to be the decision of the Secretary of State.
75. In deciding whether to impose sanctions, the DfE may take into consideration any actions that the OfS is taking on related issues. The OfS and the DfE will seek to ensure that a provider is not unnecessarily required to take actions that may be duplicative. However, the OfS and the DfE will each make their own decisions and there may be occasions where they would each seek different assurances over similar issues.
76. Compliance with the DfE's criteria and conditions of specific course designation will be an ongoing condition of registration during the transition period (condition Z2). Where the OfS or the DfE become aware of possible noncompliance with a criteria or condition of specific course designation, the DfE will lead the investigation of this and will share information about the concern (and any related investigation of it) with the OfS. Once it has made a decision, the DfE will tell the OfS whether it has decided that there is, or has been, a breach of its specific course designation conditions, and also whether any sanction has been or will be applied. The OfS will then consider whether the issue affects the provider's registration and, if so, in what way. Section 8 sets out the interventions and sanctions that the OfS may use in the period to 31 July 2019.
77. Any decision, by either the OfS or the DfE, will have an impact as soon as it is made. If the OfS decides to suspend or remove a provider's registration, this will take effect from the date of the OfS's final decision and will not wait until 1 August 2019 when the regulatory framework is fully implemented. However, only the DfE's decisions on designation can affect students' access to

---

7

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/631441/Specific\\_course\\_specfic\\_course\\_designation\\_guidance-2017.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/631441/Specific_course_specfic_course_designation_guidance-2017.pdf)

the student support system during the transition period. Any decision that the OfS makes to remove a provider's registration would only affect new students' access to the student support system from 1 August 2019.

## **Section 7: Assessing compliance with the new conditions of registration**

78. From the date of a provider's registration, the OfS will assess whether it continues to satisfy the ongoing conditions of registration that apply during the transition period. The OfS will do this on the basis set out in the regulatory framework.
79. Where a condition requires a provider to provide information, for example as a reportable event, or to ensure that its entry on the Register is accurate, the OfS will decide whether that information affects the provider's registration status.
80. If the OfS imposes any specific conditions of registration, it will monitor the provider's compliance with these.
81. If the OfS sees evidence that a provider has, or might, breach one or more of its conditions of registration it will investigate (see Section 8 below).
82. Where the OfS is satisfied that a breach of its carried forward regulatory requirements has occurred, it will also consider the steps it will take in response to the corresponding breach of the transition period condition of registration.



## Section 8: Actions under the new conditions of registration

83. The OfS's new powers of intervention and sanction, and the factors that it will take into account as it considers using them, are set out in the regulatory framework. The powers that the OfS is able to use during the transition period are set out in this section.
84. In very serious circumstances the OfS may decide to suspend a provider's registration or to deregister it. The use of these sanctions may affect the benefits available from the provider's registration, and to its students, from 1 August 2019.

### Interventions

#### Increased engagement

85. If the OfS considers that there is an increased risk of a breach of one or more of a provider's ongoing conditions of registration, it may decide to enhance its engagement with the provider on the basis set out in the regulatory framework.
86. Section 6 sets out how the OfS and the DfE will work together where they are intervening on similar matters under their respective powers.

#### Investigation

87. If the OfS becomes aware of issues relating to a provider's compliance with its ongoing conditions of registration it may investigate. Annex E sets out the approach that the OfS will take to ensure that any investigation is able to explore issues and identify any actions necessary for both the carried forward powers and the new registration powers.
88. Annex E also sets out how the OfS will use its entry and search powers as part of an investigation where the circumstances warrant this. The OfS may only use these powers once a provider is registered and, during the transition period, only in relation to the ongoing conditions of registration that apply to the provider during this period.

#### Specific ongoing conditions of registration

89. The OfS may decide to apply a specific ongoing condition of registration where it considers:
  - a) That there is a specific risk that is not addressed by a general ongoing condition.
  - b) To mitigate an increased risk that a provider may breach an ongoing condition of registration.
  - c) To prevent or remedy a breach of an ongoing condition of registration.
90. The approach that the OfS will take to imposing, varying or removing a specific condition of registration is set out in the regulatory framework.

### Formal sanctions

91. There are a number of formal sanctions available under the new powers during the transition period. The OfS would expect to use these where there is, or has been, a breach of one or more of a provider's ongoing conditions of registration.

## **Refusal to agree or renew an access and participation plan**

92. When a provider applies to be registered the OfS will assess its access and participation plan (if it applies to be an Approved (fee cap) provider and to charge fees above the basic amount) and will approve the plan if it meets the OfS's requirements. If the plan does not meet the OfS's requirements the plan will not be approved. If a provider has not taken all reasonable steps to comply with the provisions in its access and participation plans and to uphold the commitments made in those plans to the provider's students, the OfS may refuse to renew a plan for a specified period of time. The OfS may also withhold funding or impose a fine in such circumstances.
93. The OfS will make these decisions on the basis set out in the guidance issued by the Director for Fair Access and Participation under section 29 of HERA (see OfS 2018.03 at [www.officeforstudents.org.uk/#documents](http://www.officeforstudents.org.uk/#documents)).

## **Suspension from the Register**

94. The OfS may decide to suspend a provider's registration (or suspend some elements of its registration) if there is, or has been, a breach of one or more of its ongoing conditions of registration. The OfS will do this on the basis set out in the regulatory framework.

## **Deregistration**

95. The OfS is able to decide to deregister a provider if there is, or has been, a breach of one or more of its ongoing conditions of registration. The OfS will do this on the basis set out in the regulatory framework.

# PART C: Annexes

## Annex A: Condition Z2: Transition ongoing condition of registration

**Condition Z2:** During the transition period, the provider must comply with the criteria and conditions of specific course designation imposed by the Secretary of State.

### Summary

**Applies to:** All registered providers designated for student support by the Secretary of State under the student support regulations<sup>8</sup>.

**Initial or ongoing condition:** ongoing condition.

**Legal basis:** section 5 of HERA.

### Notes

1. The student support regulations allow the Secretary of State to designate courses for access to student support, and in doing so the Secretary of State will impose conditions of designation. These are separate from, and in addition to, the conditions of registration applicable to a provider registered with the OfS.

### Guidance

2. The 'criteria and conditions of specific course designation' means the criteria and conditions set out in DfE's guidance on specific course designation<sup>9</sup> or any other conditions specified in writing by DfE in relation to an individual provider.
3. In judging whether a provider has satisfied this condition, material that the OfS may consider includes:
  - a) Any breaches of the criteria and conditions of specific course designation.
  - b) The actions taken by the provider to ensure that criteria and conditions of specific course designation are not breached.

---

<sup>8</sup> Under the Education (Student Support) Regulations 2011 (as amended). Or, for postgraduate master's courses, the Education (Postgraduate Master's Degree Loans) Regulations 2016 (SI 2016 No.606) as amended by the Education (Postgraduate Master's Degree Loans)(Amendment) Regulations 2017 (SI 2017 No.594

<sup>9</sup> <https://www.gov.uk/government/publications/specific-course-designation-alternative-higher-education-providers>

## Assessment

4. If a provider fails to comply with the criteria and conditions of specific course designation, the OfS may request further information from the DfE or from the provider, to enable it to investigate and take appropriate action if required.
5. Where the OfS is satisfied that a breach of criteria and conditions of specific course designation has occurred, it will also consider the steps it should take in response to the corresponding breach of this condition of registration. Such action may include, but not be limited to enhanced monitoring, for example to ensure closer scrutiny of the financial viability or sustainability of a provider, or the imposition of a specific condition of registration to require specific actions to support the delivery of plans (such as the appointment of staff or implementation of an action plan). In cases of more serious mismanagement of financial support from the student support system, the OfS may also impose a specific condition to restrict a provider's future eligibility for financial support.

## Behaviours

6. The following are non-exhaustive examples of behaviours that may indicate compliance with this condition. The provider:
  - Complies with any criteria and conditions attached to the student support finance it receives.
  - Has management and governance arrangements that are adequate and effective.
7. The following are non-exhaustive examples of behaviours that may indicate non-compliance with this condition. The provider:
  - Fails to comply with any criteria and conditions attached to the student support finance it receives.
  - Has management and governance arrangements that are not adequate or effective.

## Annex B: Data returns

1. The table below sets out the data returns that providers are required to submit during the transition period.
2. Providers designated for Disabled Students Allowance only do not need to submit these returns.

Data return	Submission body and submission date	Further Information
Destination of Leavers from Higher Education (2016-17)	Submit to HESA 9 May 2018	<p>This is a survey of the destinations of those students who qualified in 2016-17 and providers will need to submit data that they have already collected to HESA.</p> <p>Providers do not need to submit data if they have specific course designation for teach out of current students only, or are no longer designated.</p> <p><a href="https://www.hesa.ac.uk/collection/c16018/data_collection_schedule">https://www.hesa.ac.uk/collection/c16018/data_collection_schedule</a></p>
Unistats	Submit to HESA May to August 2019	<p>The Unistats record collects information about courses that a provider will offer to its students. This helps prospective higher education students to make decisions about what and where to study.</p> <p>Providers do not need to submit data if they have specific course designation for teach out of current students only, or are no longer designated.</p> <p><a href="https://www.hesa.ac.uk/collection/c17061">https://www.hesa.ac.uk/collection/c17061</a></p>
Graduate Outcomes Survey	Submit to HESA First submission September 2018	<p>This survey is replacing the Destinations of Leavers from Higher Education survey. Providers will need to provide HESA with the contact details of their students who have completed their studies, who will then be surveyed by a contractor.</p> <p>Providers do not need to submit data if they have specific course designation for teach out of current students only, or are no longer designated.</p> <p><a href="https://www.hesa.ac.uk/collection/c17071/data_collection_schedule">https://www.hesa.ac.uk/collection/c17071/data_collection_schedule</a></p>
AP student return	Submit to HESA Final submission November 2018	<p>The AP student return is an individualised student data return that providers information about individual students.</p>

		<p>Providers do not need to submit data if they are funded and regulated by the ESFA and submit full information about their higher education students to the ESFA in their ILR record. If a provider has training or other contracts with the ESFA (rather than a funding relationship) it will still need to complete the AP student return.</p> <p><a href="https://www.hesa.ac.uk/collection/c17054">https://www.hesa.ac.uk/collection/c17054</a></p>
National Student Survey	Submit to Ipsos January to April 2019	<p>The National Student Survey provides information about student satisfaction of undergraduate students who are studying in the final year of their courses, where the course is longer than one year of full-time equivalent study. The data will be collected by contractors working on behalf of the OfS and other stakeholders. Providers will be expected to provide contact details for students who will be surveyed. The next survey period is January to April 2019.</p> <p>Providers do not need to submit the return if they:</p> <ul style="list-style-type: none"> <li>• provide only postgraduate provision</li> <li>• Have specific course designation for teach out of current students only, or are no longer designated.</li> </ul> <p><a href="http://www.thestudentsurvey.com/institutions.php">http://www.thestudentsurvey.com/institutions.php</a></p>

3. Note: the HEAPES return, which previously provided information about actual and forecast student numbers in the current year, and supported DfE's monitoring of recruitment, will no longer be collected.

## Annex C: Annual monitoring exercise

1. The OfS will work closely with the DfE as it checks that a provider continues to meet the criteria and conditions of specific course designation. The OfS will provide advice to the DfE for that purpose.
2. In late 2018, the DfE will carry out an annual monitoring exercise, using the information set out below. A provider may have applied for registration with the OfS before the DfE's annual monitoring exercise starts. Where a provider has submitted up-to-date information to the OfS for registration (for example, its latest audited financial statements), the OfS will use this for the annual monitoring exercise for specific course designation. This means a provider will only need to submit information for the annual monitoring exercise for specific course designation that the OfS does not already hold.
3. The table below shows the information that providers need to submit and the timings of these submissions for the transition period.
4. A provider designated only for the Disabled Students Allowance does not need to submit this information. The information that such a provider is required to submit is set out in section 2 above.

Element of annual monitoring return	Approval level	Deadline
Annual return form	Accountable officer	By 20 October 2018
Audited full financial statements (if these are not already held from the registration process)	Governing body	By 20 October 2018
Financial and student number forecast tables (if these are not already held from the registration process)	Governing body	By 20 October 2018
Financial commentary to support the financial and student numbers tables (if this is not already held from the registration process)	Governing body	By 20 October 2018

### Annual return form

5. A provider's annual return form will need to include:
  - Any changes to validation arrangements since August 2017, including any reviews or renewals of these.
  - Any previously unreported changes of circumstance under the conditions of specific course designation.

- The latest available audited financial statements (see below).
  - Updated financial tables and commentary (see below).
6. The OfS will issue the template and instructions about how to complete the template in the summer of 2018.

## **Financial statements**

7. Where a provider has new financial statements that have become due since it submitted them (to HEFCE in its last annual monitoring return or to the OfS as part of the registration process) it will need to submit them to the OfS, together with updated financial and student number tables and an accompanying commentary. A provider's audited financial statements have become due if it is more than nine months since the year end to which the financial statements apply.
8. If a provider's new financial statements do not become due before 20 October 2018 (the submission date for the annual monitoring exercise) it does not need to submit them or updated financial tables or a commentary to the OfS as part of the annual monitoring return. However, the OfS may require these to be submitted once they become available.
4. Submission of audited financial statements is a requirement of specific course designation regardless of whether this is a legal requirement for a provider, or whether it has exemption from filing audited accounts at Companies House or with the Charity Commission due to the size or legal form of the organisation.
5. Some businesses do not need to have audits of their financial data, but the DfE requires that financial statements are audited by an independent external auditor (see below) before submission to the OfS. This is so that the OfS and the DfE can have confidence in the information that a provider submits.
6. If a provider submits unaudited financial statements there may be insufficient evidence that it meets the criteria and conditions of specific course designation.
9. A provider's audited financial statements must include:
- Statement of comprehensive income (statement of revenue and expense, formerly known as the profit and loss).
  - Statement of financial position (formerly known as the balance sheet).
  - Statement of retained earnings (statement of changes in equity).
  - Cash flow statement.
  - Notes to the accounts.
7. A provider's audited financial statements must contain all of parts set out above, regardless of whether this is a legal requirement for it or whether it has exemption from including certain parts (such as cash flow statements) due to its size or legal form.
8. Some businesses do not need to include all parts set out above in their financial statements, but the DfE requires that financial statements include all of these parts. This is so that the OfS and the DfE have a full picture of a provider's financial performance and position so that they can make an appropriate, fair and reasonable assessment of its financial viability and sustainability.



9. If a provider submits financial statements that do not contain all of the parts set out above there may be insufficient evidence that it meets the criteria and conditions of specific course designation.
10. Financial statements must be externally audited by independent auditors. A provider's external auditor must provide an opinion to the governing body about whether the financial statements provide a true and fair view of the financial results for the year. External auditors must report whether in all material respects:
  - The financial statements give a true and fair view of the state of the provider's affairs, and of its income and expenditure, gains and losses, changes in reserves and cash flows for the year. They should take into account relevant statutory and other mandatory disclosure and accounting requirements, and the OfS's requirements.
  - The financial statements have been properly prepared in accordance with the Financial Reporting Standard 102 or International Financial Reporting Standards (IFRS), depending on which is appropriate for the size and type of the organisation.
10. Audited financial statements must be signed by the auditor and by the provider's chief executive, and the signed version that includes the auditor's report must be submitted.
11. The external auditor's report must cover all parts of the audited financial statements and not be limited to a sub-set of the pages included in the audited financial statements. This is so that the OfS and the DfE can have confidence that the auditor's opinion applies to all of the information in the financial statements (as set out in the auditor's opinion) and that the auditor has seen the final version of the financial statements that are submitted.
12. If a provider submits financial statements that are not signed by the auditor, or for which the auditor's opinion does not cover all of the pages in the financial statements, there may be insufficient evidence that the provider meets the criteria and conditions of specific course designation.

### **Financial tables and commentary**

11. If a provider needs to submit audited financial statements it must also submit its audited financial data in updated financial and student number tables. The provider will need to use the template and instructions published by the OfS at [www.officeforstudents.org.uk/#documents](http://www.officeforstudents.org.uk/#documents). The tables provide historic and forecast information about student numbers and about financial performance and position. This enables the OfS to assess financial sustainability and make a judgement about financial risks. The tables must be completed in full.
12. The updated financial and student number tables must be accompanied by a commentary that includes the following:
  - Assumptions made in the financial tables about the forecast data – this is information and explanation about why the numbers on the tables have been changed between the years to which they apply. This includes, but is not limited to:
    - Whether the provider thinks that its student numbers will increase, decrease or stay the same from year-to-year and why.
    - Whether the provider is planning to change the fees that it is charging students and, if so, by how much.

- Whether the provider is planning to take any loans from a bank, shareholders, directors or anyone else and, if so, information about these plans (how much is it planning to borrow, when will this be taken out, when will it be paid back, what will it be used for) and whether it will affect the provider's viability or sustainability.
- Whether the provider intends to change its business model to expand into or withdraw from specific markets (for example distance learning provision).

This information is required to allow the OfS to understand the provider's current and forecast financial performance and position in its context. This allows the OfS to form a fair and reasonable judgement about the provider's financial viability and sustainability.

- How the provider is managing any financial risks – this is information about any emerging risks (including changes to forecasts) that may affect current or future financial viability or sustainability or both. These may be risks that are specific to the provider's own business or students or may be more general risks that also apply to a number of other providers.

## Annex D: Reportable events

1. A reportable event is any event or circumstance that, in the judgement of OfS, materially affects or could materially affect the provider's legal form or business model, and/or its willingness or ability to comply with its conditions of registration. Reportable events must be reported to the OfS under condition F3(i) and include, but are not limited to:

- **A change in the provider's circumstances**, including but not limited to:
  - a sale of either the provider itself, a part of it, or its parent
  - a merger of the provider with another entity
  - an acquisition by the provider of another entity
  - a material change in the provider's business model, such as a move to focus on further instead of higher education
  - a change in the provider's legal status
  - other, similar structural changes, such as the establishment of joint ventures, or the separation of the provider into multiple entities
  - other changes resulting in a change of ownership of the provider.
- **A change of ownership.** The OfS is principally, but not exclusively, concerned with situations where 50 per cent or more in the shareholding of the registered provider (or the closest equivalent, where the provider is not limited by shares) are, or may be, in common ownership. Common ownership includes:
  - ownership by the same person or entity
  - ownership by multiple entities themselves under common ownership or control
  - ownership by multiple individuals or entities who by agreement or practice exercise their ownership rights in a co-ordinated way (and without restricting the scope of the OfS's understanding of what constitutes common ownership, it will deem people who are 'connected' to be exercising their ownership rights in a co-ordinated way)
  - ownership by multiple individuals or entities on behalf of, or acting under the direction or in the interests of, the same third party, including a case where ownerships are held on trust for a common beneficiary, and
  - any similar structure.

Ownership does not require beneficial ownership. A provider:

- must inform the OfS of any changes in ownership where 50 per cent or more of the ownership of the registered provider is in common ownership, and a change affects the majority ownership rights. This includes the creation of majority ownership rights for the first time, the transfer of majority ownership rights to a new holder, the introduction of a new entity to majority ownership rights and majority ownership rights coming to an end

- must inform the OfS about any change in ownership that affects 15 per cent by value or voting rights of the registered provider's shares, or closest equivalent. A provider must do so whether the change is brought about in one transaction or a series of connected transactions. A provider does not need to inform the OfS of entirely unconnected transactions provided none of those transactions is individually above the notification threshold
- is not required to inform the OfS of changes in ownership where 50 per cent or more of the ownership of the registered provider is in common ownership, and the changes only affect less than 15 per cent by value or voting rights of the minority ownership rights.

Some examples of changes that must be reported include:

- where all or any part of the majority ownership rights in the provider change:

Example 1: there are five shareholders, each holding 10 per cent of the shares in a provider. They are business partners and act in a coordinated way. One shareholder sells their shareholding to the others. This must be notified.

Example 2: there are three shareholders, each holding 20 per cent of the shares in a provider. They are business partners and act in a coordinated way. One sells a 10 per cent shareholding to a relative who is a connected person. This must be notified.

Example 3: there are three shareholders, each holding 20 per cent of the shares in a provider. They are business partners and act in a coordinated way. One sells their shareholding to a third party. This must be notified.

- where additional share capital is issued, or shares are bought back, or the voting rights that attach to existing shares are changed
  - where a controlling proportion of a provider's shares is directly, or indirectly (such as through those of its parent organisation(s)), acquired by another individual(s), partnership(s) or organisation(s).
- **A change of control.** 'Control' has the meaning given by section 1124 of the Corporation Tax Act 2010, and 'change of control' means a change in control so defined. Where two or more entities or individuals, by agreement or practice, exercise their rights in a coordinated way, with the result that they together have control so defined, each will be treated as having control of the provider. A provider is required to notify the OfS of any change in the individual(s) or entity/ies who have control of the provider.
  - The provider becoming aware of suspected or actual fraud or financial irregularity.
  - The provider becoming aware of court or legal action.
  - The provider resolving to cease to provide higher education.
  - Regulatory investigation and/or sanction by other regulators, e.g. Charity Commission, Home Office.
  - Loss of accreditation by a Professional, Statutory or Regulatory Body (PSRB).

- Any new partnerships, including validation or sub-contractual arrangements.
- Opening a new campus.
- Intended campus, department, subject or provider closure.
- Any other material events with possible financial viability or sustainability implications, including but not limited to:
  - a material change in actual or forecast financial performance and/or position
  - a material change in gearing
  - a material change in student numbers that was not included in the provider's financial forecasts
  - for a provider with a legally binding obligation of financial support underpinning its financial sustainability, a withdrawal of the obligation (including as a result of a change of control, even where the new owner will offer a similar obligation) or a material adverse change in the counterparty's financial position or other standing that could affect its suitability as counterparty
  - the sale of significant assets
  - significant redundancy programmes.

This is not intended to be an exhaustive list and it may be revised periodically to ensure it captures the relevant reportable events.

## Annex E: Investigations

1. The OfS may investigate if it has concerns about:
  - a) A provider's compliance with the general ongoing conditions of registration that apply during the transition period.
  - b) A provider's compliance with any specific condition of registration that apply during the transition period.
  - c) Matters related to the OfS's monitoring duty under 'Prevent'.
2. The OfS may also investigate if students or others raise concerns with it about any of the areas listed in paragraph 1.
3. Such concerns may be reported directly to the OfS through its notifications and whistle blowing procedure by stakeholders including governing body members, staff, students, external examiners, Professional, Statutory and Regulatory Bodies<sup>10</sup> (PSRBs), the Office of the Independent Adjudicator (OIA), student representative bodies, and others. This reporting process is not intended to interfere with the ongoing work of the OIA in relation to cases brought by individual students.
4. Where there is sufficient evidence of a serious problem to require further investigation and possible action, the scale and nature of the OfS's intervention will be proportionate to the potential significance of the problem and the risk it represents to students. In investigating, the OfS may:
  - a) Work with its partner organisations to ensure a joined-up approach to any investigation – this may include the Student Loan Company, the ESFA and others, depending on the nature of the concerns and the most appropriate approach to understand and address them.
  - b) Undertake, or ask the QAA to undertake, a tailored review visit where the concerns relate to quality or standards.
  - c) Undertake, or commission, a review of the provider's management and governance arrangements or any other aspect as necessary to enable the OfS to understand and address any potential issues.
5. If it is necessary to investigate a concern, the OfS will write to the provider to explain the issues and the steps it intends to take. The provider will need to provide whatever the OfS reasonably requires to enable it to complete its investigation. This may include access to people, records, data and information on the provider's premises and/or in its possession, custody or control. The OfS will provide an opportunity for the provider to consider and comment on the evidence and investigation before taking a final decision, except where the OfS decides that it is necessary to suspend the provider's registration (see section 8 above).

---

<sup>10</sup> PRSBs are organisations which are authorised to accredit, approve or recognise specific programmes in the context of the requirements of the PSRB.

6. The OfS will write to the provider with the outcome of an investigation regardless of whether it plans to change an aspect of the provider's registration or vary or impose any specific ongoing registration conditions as a result of the investigation.
7. The OfS will publish further guidance about the notifications and whistle blowing procedure.

### **Entry and search**

8. HERA gives the OfS – in certain limited circumstances – the powers of entry and search to a provider's main premises as well as premises used by an institution linked to the provider. This power comes into effect from 1 April 2018, but can only be used in relation to a registered provider.
9. The OfS will use its power of entry and search only in exceptional circumstances, and where its usual methods of investigation would not be effective. There are two main categories of 'exceptional circumstance':
  - a) Where the OfS believes that a provider would destroy or interfere with relevant information if it is requested in the usual way, such as if the OfS had reason to believe that there was fraud or misuse of public funds that involved a provider's accountable officer.
  - b) Where a provider has not complied with prior requests for relevant information or co-operation.
10. To exercise its power of entry and search, the OfS must first seek and obtain a magistrate's warrant and, before granting the warrant, the magistrate must be satisfied that four tests have been met:
  - a) There are reasonable grounds for suspecting that the provider has breached a condition of registration or of funding.
  - b) The suspected breach is sufficiently serious to justify entering the provider's premises.
  - c) Entry to the provider's premises is necessary to determine whether the suspected breach is taking place, or has taken place.
  - d) The provider has refused, or is likely to refuse, entry to its premises; or requesting entry may frustrate or seriously prejudice the purpose of entry.

If the OfS enters and searches a provider's premises or those used by an institution linked to the provider, it may be accompanied by the police, and the search warrant will state, so far as is possible, which condition(s) of registration or of funding the OfS suspects the provider of breaching. During the search, the OfS may copy documents and/or seize and retain items that it reasonably believes are evidence of this breach.



© The Office for Students copyright 2018

This publication is available under the Open Government Licence 3.0.

[www.nationalarchives.gov.uk/doc/open-government-licence/version/3/](http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/)