

Office for
Students



Consultation on regulating quality and standards in higher education

Analysis of responses

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Introduction

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

Our four regulatory objectives

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

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

1. This document relates to our consultation on regulating quality and standards in higher education held between 17 November 2020 and 25 January 2021 (the 'phase one consultation').¹
2. The consultation was conducted at an early stage of policy development and invited views about our proposed general approach to defining and regulating quality and standards. It made preliminary policy proposals about the minimum baseline requirements we would set for higher education providers, and our approach to ensuring these requirements are met. The proposals in the consultation are summarised below.

Consultation proposals

Proposal 1: Define 'quality' and 'standards' more clearly for the purpose of setting minimum baseline requirements for all providers. This includes:

- i. Defining 'quality' to include the outcomes delivered for students, and enable consideration of quality for different modes and levels of provision and for different groups of students.
- ii. Defining 'standards' to include new sector-recognised standards for the classifications awarded for undergraduate degrees.

¹ The consultation is available at www.officeforstudents.org.uk/publications/consultation-on-regulating-quality-and-standards-in-higher-education/.

- iii. Expressing some initial registration requirements differently from the equivalent ongoing requirement to ensure our regulatory approach reflects the context for providers that may not yet have delivered higher education.
- iv. Clarifying the way in which our regulation of quality and standards applies to partnership arrangements and transnational education (TNE).

Proposal 2: Set numerical baselines for student outcomes and assess a provider's absolute performance in relation to these. This includes:

- i. Setting higher, more challenging, numerical baselines that apply to continuation, completion and progression to managerial and professional employment or higher level study, which apply to all providers. We propose that numerical baselines will not be adjusted to take account of differences in performance between demographic groups.
- ii. Considering a provider's performance at a more granular level, including consideration of performance at subject level, in courses delivered through partnerships, and for students studying outside the UK.
- iii. Considering a provider's context to ensure we have properly interpreted its absolute performance.
- iv. Improving transparency in relation to the indicators used to regulate student outcomes.

Proposal 3: Clarify the indicators and approach used for risk-based monitoring of quality and standards.

Proposal 4: Clarify our approach to intervention and our approach to gathering further information about concerns about quality and standards.

Analysis of the phase one consultation

- 3. As we set out in our blog of 10 June 2021, we intend to publish our detailed proposals relating to the regulation of quality and standards (which will build on the phase one consultation) in a small number of consultations over the course of 2021.² We will also be publishing our analysis of the phase one consultation responses in stages.
- 4. In this document we are publishing our first analysis of responses to the phase one consultation. This covers those parts of responses relevant to the development of the further proposals set out in our July 2021 consultation on quality and standards conditions³ (the 'phase two consultation'). We have therefore included analysis of responses received regarding all aspects of proposal 1 in the phase one consultation, as well as other parts of responses that are relevant to the phase two consultation proposals. We have set out our consideration of those responses, including where we have made changes to our proposed

² See www.officeforstudents.org.uk/news-blog-and-events/blog/quality-and-standards-the-road-to-more-rigorous-regulation/.

³ See www.officeforstudents.org.uk/publications/consultation-on-quality-and-standards-conditions/.

approach. Where we have not made changes from our phase one consultation proposals, this analysis explains our reasons for this.

5. We intend to publish further analyses of responses to the phase one consultation over the coming months. Responses relevant to proposal 2 are being considered as we develop our approach to the regulation of student outcomes and an analysis of these responses will be published when we publish more detailed proposals for consultation, currently expected in autumn 2021. This analysis document does not, therefore, cover any points that were made exclusively in relation to current condition B3 or any potential revised conditions relating to successful student outcomes.
6. We also intend to publish, alongside our analysis of responses to the phase two consultation and as part of our final approach to the regulation of quality and standards, an analysis of points made exclusively in relation to proposals 3 and 4 of the phase one consultation and which have not been directly relevant to the development of our phase two proposals.

Background

7. We consulted on proposals for the regulation of quality and standards in higher education, drawing on our experience of regulating providers since 2018 and as a result of the disruption caused by the coronavirus pandemic. We considered that it was necessary to rebalance our approach to be better able to anticipate risks to quality and standards, both for individual providers and for the sector as a whole.
8. The consultation was launched on 17 November 2020. Stakeholders were invited to share their views using an online survey to submit responses. There were three consultation questions relating to proposal 1 and four questions that related to all of the proposals (in addition to specific questions on the other proposals). The consultation questions are set out in Annex A. The consultation was published on the OfS website and accountable officers of higher education providers that are registered with the OfS were notified of the consultation by email.
9. We received 271 responses, the majority of which were from higher education providers, their staff, students, students' unions, sector representative groups or sector mission groups. Many respondents provided significant commentary in response to the questions posed as part of the consultation. All responses received were accepted for consideration.

Qualitative analysis

Common themes

10. A number of common high-level themes emerged from responses:
 - a. A number of respondents considered that further detail was required regarding some of the proposals before they would be able to make an informed response on the subject. We note briefly in this document where that view was most commonly expressed. We have taken these comments into account. Further details of our proposals arising from the phase one consultation are now set out for public consultation in our phase two consultation and will be set out in the future consultation on student outcomes.

- b. A number of respondents considered that some of our phase one proposals represented a fundamental shift away from the OfS's current approach to regulation. Examples of areas where this was most commonly expressed include the impact on providers' autonomy of the proposals overall or our proposals in relation to the regulation of transnational education (TNE). In relation to autonomy many of the comments were as a result of an interpretation of our proposals as prescriptive and rules-based. This was not our intention and we have considered carefully how we explain our proposed requirements. In relation to TNE, the objection seemed to be that this represented an increase in the scope of our current regulatory remit. We remain of the view that our proposals fall within the functions of the OfS as set out in the Higher Education and Research Act 2017 (HERA) and are consistent with the OfS's overall regulatory approach as set out in our regulatory framework.⁴ We respond to these points in more detail in this document.⁵
- c. A number of respondents argued that the best interests of English higher education would be served by the OfS adopting an approach to regulation which placed more reliance on partnership with, or offering support to, the sector. We understand the importance of engagement with the OfS to providers, and in particular the points made in responses about the provision of briefings and training to providers both when we consult on changes to our approach and in steady state. HERA is clear that the regulatory functions of the OfS can only be discharged by the OfS and there is no provision for those functions to be shared with providers in a partnership arrangement. However, we recognise effective engagement with providers and other stakeholders as an important part of our regulatory model. At the outset of the coronavirus pandemic we signalled in general terms our intention to engage more routinely with providers and have done so. We have received positive feedback on this and intend to maintain this increased level of engagement with providers on matters relating to quality and standards. However, given that the resources of both providers and the OfS are finite, we intend to discuss with the sector over time how we can do this most effectively.
- d. Other respondents argued that the focus of regulation should be on enhancement and continuous improvement rather than securing a minimum baseline for quality and standards. Our view is that it is in the interests of students to include both clear baseline quality and standards and the recognition of excellence above the baseline within our regulatory approach. The regulatory model set out by HERA and the regulatory framework enables us to set minimum requirements for quality and to safeguard standards in the student interest while at the same time incentivising and recognising quality beyond these requirements through a separate exercise, the Teaching Excellence and Student Outcomes Framework (TEF). We do not consider that the interests of students would be best served by an approach to quality and standards that placed less emphasis on baseline quality and standards than our proposals, because it is in the interests of students for there to be clear mechanisms for the safeguarding of those baselines. However, TEF is the mechanism through which, over and above

⁴ See www.legislation.gov.uk/ukpga/2017/29/contents/enacted and www.officeforstudents.org.uk/publications/securing-student-success-regulatory-framework-for-higher-education-in-england/.

⁵ See paragraphs 127-132, 163-169 and 309-311.

baseline regulation, the continuous improvement of higher education is encouraged and recognised, which is also to the benefit of students.

- e. In the phase one consultation we also set out our intention to ensure that the TEF and baseline quality regulation were aligned.⁶ Several respondents sought more information on the potential implications for providers of weak performance in baseline regulation on the TEF, or weak performance in TEF assessment on baseline regulation. Our phase two consultation, paragraphs 105-107, sets out a proposed way forward for how compliance with the quality and standards conditions and the TEF could be linked. It is our intention to consult further in the autumn consultation on the TEF on how baseline quality and standards regulation and the TEF should be aligned.⁷

Quantitative analysis

11. We have set out in Annex B, for additional context, a short quantitative analysis of responses received overall and of questions relating to proposal one where an 'agree' or 'disagree' answer was sought.

⁶ See Annex D of our consultation on quality and standards (November 2020), available at www.officeforstudents.org.uk/publications/consultation-on-regulating-quality-and-standards-in-higher-education/.

⁷ An update on the development of the TEF is available at: www.officeforstudents.org.uk/publications/tef-update-on-the-development-of-proposals-for-the-future-exercise/.

The proposed definitions for quality and standards

Introduction

12. This section provides an overview of the responses to the proposed definitions of 'quality' and 'standards' set out in Table 1 in Annex A⁸ of the phase one consultation, and how the OfS intends to address the points respondents made. For reference, Table 1 is set out in [Annex C](#) of this document.
13. We proposed that these definitions would be used to express minimum baseline requirements for quality and standards in revised B conditions.
14. We regulate the quality and standards of higher education for 'all students, from all backgrounds'. Where the proposed definitions for quality and standards in Table 1 refer to 'students' we mean all types of students, whatever, wherever and however they study, and including those from groups underrepresented in higher education and with protected characteristics.
15. Although we are predominantly a principles-based regulator, the proposals in Table 1 which relate to sector-recognised standards adopt a more rules-based approach. We proposed this approach because this is an area in which we can provide greater clarity for students and for all stakeholders about the standards required from all providers and the standards we propose to adopt are, themselves, expressed in a more rules-based way.
16. We have considered responses to the phase one consultation as we have developed our phase two consultation on changes to the current B conditions and the regulatory framework. This includes guidance underpinning revised B conditions which would form part of the regulatory framework, which is designed to respond to points made by some providers that they find it difficult to act with confidence in a principles-based regulatory environment.

Responses that applied to all categories and definitions

17. Table 1 set out definitions falling into five categories:
 - a. Access and admissions
 - b. Course content, structure and delivery
 - c. Resources and academic support
 - d. Successful outcomes
 - e. Secure standards.
18. Responses to the definitions in relation to 'successful outcomes' are not covered in this document, as they are being considered as we develop our more detailed proposals for regulating student outcomes (currently expected to be published in autumn 2021).

⁸ These are further explained at paragraphs 29-54 of the phase 1 consultation.

19. Several comments were made that were relevant to all the categories of the proposed definitions of quality and standards. These are outlined in paragraphs 21-26. Some respondents made comments that were specific to one category of the proposed definitions. These are set out in paragraphs 35-45, 58-66, 73-86, and 98-104.
20. A large proportion of respondents made comments that did not support the proposed definitions.
21. A number of respondents said that they thought the definitions were difficult to quantify and the use of terms in the definitions that could be subjective, such as 'adequate', 'sufficient', 'effective' or 'up to date', would make it difficult for the OfS to form robust assessments. For example, some respondents said it was unclear how the adequacy of learning resources or the sufficiency of staff numbers would be measured, particularly across different cohorts and subjects, and that often these are matters best reserved for academic judgement.
22. Some respondents considered that further detail or explanation was needed to be able to comment on the proposed definitions. Further information was requested, including about how the proposed definitions would operate in practice, how all aspects of the definitions would be assessed, who would be responsible for this, and the role of the designated quality body (DQB) in these assessments.
23. Further information was also requested about how the proposed definitions would interact with OfS policy and regulation in related areas, such as grade inflation, and with the access and admissions related requirements in access and participation plans. It was suggested that introducing the requirements in the proposed definitions might result in multiple metrics in the same areas. Further explanation was also requested about how the definitions would interact with Professional, Statutory and Regulatory Bodies (PSRBs) or industrial and employability considerations.
24. Other comments made that disagreed with the proposed definitions in Table 1 included:
 - a. They are too prescriptive and would impact on institutional autonomy, for example the autonomy 'to determine the content of particular courses and the manner in which they are taught, supervised and assessed' as set out in HERA.
 - b. The focus on providers' 'input measures' (i.e. their inputs into courses, for example the learning resources provided) could be detrimental to innovation in approaches to teaching and learning. The focus should be on outcomes.
 - c. They do not account for the breadth of the higher education sector and diversity of students and courses, for example courses which provide micro-credentials.
 - d. They focus heavily on providers delivering undergraduate courses. It is not clear how they will apply to postgraduate provision, new modular approaches for future delivery, Solicitors Qualifying Exams (SQE), short courses not linked to awards and alternative courses such as preparatory courses or lifelong learning.
 - e. They should refer to external and existing assessment (assurance) frameworks such as the UK Quality Code as these are widely understood by the sector.

25. A further point raised was that the proposed definitions of quality and standards mainly refer to 'courses', a term that is not necessarily applicable to the study of modules. Respondents that suggested the definitions of quality were overly focused on the typical full-time undergraduate model of delivery cited references to 'course' structure, or references to 'awards', as elements of the definitions that were less applicable to modular or flexible provision. However, we understood these responses to suggest that the definitions needed amending.
26. Respondents who agreed with the proposals felt that the definitions are appropriate, clear and understandable to the sector and to students. Some respondents also felt that the definitions were not too prescriptive.

Our response

27. We have considered the points raised that the proposed definitions are overly prescriptive and would impact on institutional autonomy. As a regulator that predominantly uses a principles-based approach, we generally express definitions for regulatory purposes in a way that is deliberately not prescriptive and can be met in many different ways – our view is that a prescriptive set of rules or approaches is generally not appropriate given the diverse nature of providers and provision within the sector. To require compliance with a prescriptive set of rules would risk stifling innovation and could also infringe on institutional autonomy in an undesirable way which would not be in the student interest.
28. The proposed definitions of quality in the phase one consultation, and the proposed conditions in the phase two consultation, follow this principles-based approach, which minimises the prescriptiveness and impact on institutional autonomy of our regulation. For example, the proposed definition that 'the content of a course is up-to-date' does not prescribe what the content of a course should be, but rather requires a provider to ensure that the content is representative of current thinking and practices. Similarly, the proposed definition that 'staff who design and deliver a course are sufficient in number' does not prescribe what a sufficient number is – this will be dependent on the context of the provider and the provision. We have, however, adopted a more rules-based approach in relation to sector-recognised standards, for the reasons explained at paragraph 15 above.
29. We have listened to the requests for further information and greater clarity: the proposals for revised conditions in the phase two consultation provide further clarification and guidance about how the requirements will operate in practice. We agree that assessment of the proposed requirements within revised conditions of registration will often require us to have access to expert academic judgement and we propose that this features as necessary as part of the assessment process – further detail is also provided in the phase two consultation on assessment and the role of the DQB.
30. In relation to how the definitions interact with other aspects of OfS policy, the relationship with access and participation is set out in paragraph 279. In relation to grade inflation, the definitions proposed in the phase one consultation, and taken forward into proposed condition B4 in the phase two consultation, would bring into scope the degree classification descriptors. This would enable us to understand better the relationship between any increases in classes of degree awarded and degree standards at the provider, and to take regulatory action against individual providers where there was evidence that standards had not been met. This

complements our approach to date which has focused on the analysis of data at a sector level, following up with individual providers if there appears to be unexplained grade inflation.

31. In relation to how the definitions would interact with PSRB considerations, we set out in the phase one consultation proposals that PSRB judgements about the quality of courses they accredit would be used as an indicator in our approach to monitoring (see Annex C of the phase 1 consultation).
32. In relation to comments about the focus on 'input measures', we recognise that the proposed definitions regulate providers' input measures as well the outcomes that they deliver for students. We have explained why we continue to consider this necessary in our phase two consultation at paragraph 42.
33. We have considered comments that the proposed definitions do not sufficiently account for the higher education sector's diversity. As explained above, they were developed to be generally principles-based, in order that they could be applied to the breadth and diversity of courses and students across the sector. As we have developed the phase two proposals for revised conditions, we have given particular thought to whether the definitions are appropriate for the range of provision in the sector, including postgraduate provision and for modular and technical provision, to ensure that there is alignment with the direction of government policy. While respondents suggested that the definitions did not account for the breadth of higher education provision, we note that there were no suggestions for how they might be changed to better reflect different types of courses and provision. We have therefore requested any alternative suggestions as part of the phase two consultation.
34. In relation to the suggestion that the definitions should include reference to the UK Quality Code (as this is widely understood), we have set out our response in paragraphs 203-227.

Access and admissions

35. In relation to access and admissions, our proposed definitions of 'quality' (as set out in Annex A Table 1 of the consultation document) were:

- Students admitted to a course have the capability and potential to successfully complete their course.
- The provider's admissions arrangements identify the additional support students need to successfully complete their course.

36. A minority of respondents included comments related to the proposed definition for access and admissions. Of the respondents that did comment, most were not in support of this aspect of the proposed definition.
37. Some respondents suggested that there needed to be more specific guidance about the OfS's expectations for admissions arrangements, what information should be provided to applicants (at least in part to prevent the proliferation of misleading marketing materials) and what evidence would be needed to support a decision to reject an applicant on the basis that they lack the potential to succeed. It was suggested by some respondents that the definition should include expectations about making recruitment and admissions processes equal and inclusive.

38. It was also suggested that further guidance could be issued on OfS's expectations about what a good ratio of applications to offers to acceptances would be.
39. Other respondents commented specifically on identifying additional support needs for individual students through admissions arrangements and some said that students' needs often only become apparent over time or may change during their studies. It was therefore suggested that identifying additional support needs was an ongoing student support matter rather than part of admissions, or that if further assessment was required at the point of admission, additional funding and resource would be required.
40. Some respondents were concerned that to identify all of the additional support a student may need, a Disabled Students' Allowance (DSA) assessment may be required before the point of enrolment, or it may require providers to conduct a full assessment of support or put a formal plan in place for students who may also need additional support such as mature, part-time or commuter students. It was noted this could cause practical barriers in admissions for students, particularly those accepted through Clearing.
41. A small number of respondents suggested some specific wording changes to the proposed definition for access and admissions. These included the suggestion that there should be reference to collective as well as individual support needs and that the word 'additional' should be removed as providers should be identifying all of a student's needs. One respondent suggested 'capability' should be removed as a student's capability is dependent on many factors that are outside a provider's control and are harder to judge in advance of commencement of a course. Another respondent suggested the word 'fair' should be included in the definitions, to describe a provider's required admission arrangements.
42. Some respondents felt that the proposed definition for access and admissions would make higher education more difficult to access. Some of the reasons given for this were that the wording around capability and potential would make providers favour students with higher grades, and that it was not possible for providers to ensure the capability of students while also providing access to underrepresented groups who often do not have the usual prerequisites. Some respondents took the view that the proposed definitions may disincentivise providers from recruiting students with complex or significant support requirements, particularly disabled students, because of their interpretation that a full assessment of support needs would be required.
43. Some respondents also suggested that the increased resource required to fully identify students' needs at the point of admissions may discourage providers from recruiting from underrepresented groups.
44. A small number of respondents suggested that this element of the proposed definition was unnecessary because they rejected the idea that a provider would admit a student who did not have the potential to succeed.
45. One respondent took the view that it would not be appropriate to use admissions data to assess quality in line with the proposed definitions, as the definitions relate to the assessment of a student's capability, potential and needs and not patterns of applications, offers and acceptances.

Our response

46. We are not proposing prescriptive rules to govern how providers should make admissions decisions and the evidence needed to support these decisions – these are detailed matters for providers to decide.
47. We have set out proposals in the phase two consultation for revised conditions of registration and guidance that will underpin them. Proposed condition B2 addresses matters that relate to a provider's recruitment policies and practices by requiring the provider to ensure that the particular cohorts of students it chooses to recruit have the resources and support they need to succeed in and beyond their course. We have taken this approach rather than proposing a separate condition of registration for access and admissions, because we consider it to be a more proportionate way to achieve our policy objectives. Our policy objective is that a provider should be able to recruit any type of student it chooses but, having done so, it must ensure those students are able to succeed on their courses. We have set out the reasons for this approach, and why we consider it to be proportionate, more fully in the phase two consultation.
48. In response to points about additional resourcing required to comply with the proposed definition, we would like to clarify that this element of the definition was not intended to place additional or prescriptive requirements on providers at the point of admission, such as requirements to produce individual support plans for students, or to require DSA assessments. Rather, it was aimed at requiring providers to identify the support needs of students more generally.
49. In relation to points about students' needs changing over time or not being apparent at admission, we agree that a student's support needs may change during their duration of study and have carefully considered the comments made by respondents and the way that the proposed definition had been interpreted. Definitions relating to support have therefore been included in our proposed revision to condition B2 'Resources, support and student engagement' rather than expressing this as a requirement that relates to admissions arrangements. Further information is provided in paragraph 48 of the phase two consultation.
50. The drafting of proposed condition B2 takes account of suggested wording changes at paragraph 41 above. It clarifies that the requirement relates to the needs of groups (or 'cohorts') of students rather than individual students, and removes the reference to 'additional student needs (to clarify that the condition covers a broad range of needs).
51. In relation to the suggestion that the definition should include expectations about making recruitment and admissions processes equal and inclusive, and the suggestion to add the word 'fair' to describe a provider's admission arrangements, we are committed to supporting a fair, reliable, and inclusive admissions system and published a consultation to review the admissions system in February 2020.⁹ This review is currently on hold as a result of the pandemic, and we will consider in due course whether and how we should consider these issues further. If we resume that consultation, and respondents make a case that there should be an ongoing condition related to admissions arrangements, we would consider those arguments. In principle, we consider that such a condition could be outside of the regulatory

⁹ See www.officeforstudents.org.uk/publications/consultation-on-the-higher-education-admissions-system-in-england/.

requirements for quality; however, as the admissions consultation is on hold, we have not considered any responses, or made any decisions in relation to admissions.

52. We have considered the suggestion that ‘capability’ should be removed from the proposed definition. Our view is that an assessment of capability is necessary to ensure that only students who have a reasonable expectation of succeeding on and beyond their course are admitted. Consideration of capability is also necessary to ensure appropriate support is in place for particular groups of students. The concept of capability is now incorporated into a revised proposed condition B2, in that the condition would require providers to ensure that each cohort of students is sufficiently supported to succeed, with reference to the students’ capability.
53. An assessment of capability does not have to be made on a narrow basis of prior qualifications and could incorporate a judgement on a wider range of evidence. For this reason, we do not think the inclusion of the term in proposed condition B2 will result in providers favouring students with higher grades. Being explicit about the need to assess capability is intended to create greater clarity. For this reason (and the reasons above), we have retained the word ‘capability’ in the proposed condition.
54. In relation to requests that guidance should be provided about the information that should be provided to applicants and concerns about misleading marketing materials – each registered provider is bound by consumer protection law and condition C1 requires a provider to have due regard for relevant guidance on how to comply with the law. Guidance published by the Competition and Markets Authority¹⁰ sets out responsibilities under the law when providing information to students.
55. In relation to requests for detail about the OfS’s expectations and assessment processes, more detail on how we propose to assess the revised B conditions is set out in revised guidance in the phase two consultation.

The necessity of the proposed definitions

56. Respondents suggested that the access and admissions element of the definition is unnecessary because providers would not admit students who do not have the potential to succeed. We agree that should be the case, but the definition, and draft revised B conditions, aim to place an obligation on providers to ensure that is the case. We do not propose to prescribe how students’ capability is assessed, but expressing this requirement as part of revised B conditions makes it clear that students’ support needs should be considered as a provider develops its recruitment policy. We consider that the proposed approach will make it clearer to students about the requirements we place on providers and the minimum protections in place for students.

¹⁰ See www.gov.uk/government/publications/higher-education-consumer-law-advice-for-providers.

Use of admissions indicators

57. In response to the points about the use of admissions data to assess quality, the admissions indicators set out in Annex C of the phase one consultation were not proposed as evidence that would be used in a direct assessment of quality – rather they would be indicators that are monitored and might provide an indication of a quality concern that we may engage with a provider about.

Course content, structure and delivery

58. In relation to course content, structure and delivery, our proposed definitions of ‘quality’ and ‘standards’ as set out in Table 1 in Annex A of the consultation document were:

- The content of a course is up-to-date and assessed effectively.
- The content and assessment of a course provides educational challenge consistent with the level of the course.
- The structure of a course is coherent and delivers academic progression through the course.
- The content and structure of a course allows students to develop intellectual and professional skills.
- The course is delivered effectively and in a way that meets the needs of individual students.

59. A number of respondents included comments that related specifically to the element of the proposed definition of quality and standards for course content, structure and delivery. Some respondents agreed with or were neutral about this aspect of the definitions, but many of the comments either disagreed or suggested that clarification or further explanation was required.

60. Some respondents commented that the proposed definition undermines the HERA principle that providers have the autonomy to “determine the content of particular courses and the manner in which they are taught, supervised and assessed”¹¹ and took the view that a prescriptive approach would undermine the OfS’s principles-based approach to regulation.

61. One respondent said that this element of the proposed definitions was not appropriate for providers that do not design their own courses, but instead deliver courses that are developed and designed by other providers or organisations. The respondent did not say why this was the case but the underlying view may be that, where a provider is delivering a course on behalf of another provider, or delivers a course approved by an awarding organisation, the delivery provider should not be held accountable for the content and structure of that course.

Content and structure of course

62. It was suggested that the definition “the content and structure of a course allows students to develop intellectual and professional skills” does not cover the development of many other

¹¹ Higher Education and Research Act 2017, Part 1, section 2(8)(b)(i).

important skills that indicate quality. Those mentioned included communication and interpersonal skills, subject specific and practical skills as well as skills that enable more civic and social contributions. One respondent commented that this definition suggested a single set of skills was required for all students which runs counter to the needs of a varied market. A further suggestion from one respondent was the need for reference to digital learning capacity to be added.

63. It was also suggested by some respondents that 'intellectual and professional skills' is a much narrower definition than that given in the UK Standing Committee for Quality Assessment (UKSCQA) degree classification descriptors and that they should align.
64. A further suggestion was that the OfS should include a requirement for providers to consult with industry and employers when developing courses to ensure they instil appropriate employability skills, and that employability skills should be added as a measure alongside intellectual and professional skills.
65. Some respondents felt that the proposed definition was too narrow or limiting, with one respondent suggesting that the inclusion of "the structure of a course is coherent and delivers academic progression through the course" could prevent the development of flexible and innovative provision for diverse student needs.

Effective delivery of the course

66. Some respondents made points about the definition "The course is delivered effectively and in a way that meets the needs of individual students" as they considered this could be open to interpretation in a way that could set unrealistic expectations for students to receive individualised learning. It was suggested that the "...needs of individual students" needed further explanation.

Our response

67. In response to the points about prescriptiveness and providers' autonomy, the proposed definition was not intended to be prescriptive or limiting but applied in a principles-based way – we have therefore carefully considered responses that had interpreted the proposals as prescriptive and have addressed these points as we have developed our more detailed phase two consultation proposals for proposed condition B1: Academic experience including supporting guidance.
68. The proposed guidance contains illustrative non-exhaustive lists of examples to demonstrate the approach we may take to the interpretation of the proposed condition B1 and describes the proposed approach to the assessment of the condition for providers that do not design their own courses. Our view is that condition B1 should still apply to a provider that does not design its own courses because that provider needs to be confident that it is delivering a course that meets the requirements of the condition and cannot abrogate responsibility to the provider it is contracting from. Similarly, where a provider delivers a course designed by an awarding organisation, we would expect that provider to be responsible in regulatory terms for the course delivered to students. It would therefore not be appropriate to disapply conditions, or elements of conditions, relating to requirements for courses for some providers, because that would dilute the protection available to students. However, we would consider the contractual arrangements in place for the delivery of a course to be relevant factors in our decision-making

process about a possible breach of the condition, however our view is that no provider should be offering a course to students if our regulatory baseline requirements are not satisfied.

Content and structure of course

69. We have considered comments about the use of the terms ‘intellectual and professional skills’ within the definition and that this does not appear to include a wider set of skills that respondents considered were important for a definition of high quality. We agree with the responses and have revised the definition to refer to ‘relevant skills’ and have described what this includes. We agree that for some courses the views of industry and employers will be particularly relevant to the quality of a course and the skills that students develop. There is scope for this to form part of any assessment of compliance with the condition.
70. In relation to comments that the proposed definitions of skills should align with the UKSCQA degree classification descriptors – we agree with this point and have aligned the definitions in the proposed condition as suggested.
71. We have considered comments that the definition might prevent the development of flexible learning. We have carefully tested whether the terms and definitions used in the proposed conditions are relevant for modules and the conditions have been drafted to encompass flexible and modular learning. As a result of consultation responses, we have not included ‘academic progression through the course’ within the proposed condition but think that coherence of learning is still relevant and an important element. We have provided further explanation in the proposed guidance set out in the phase two consultation to explain this. We agree that it is important that our regulation can accommodate the breadth and diversity of courses across the sector and welcome comments and suggestions for revisions if people think that these are not appropriate for different types of provision.

Effective delivery of the course

72. We have taken account of comments that inclusion of ‘individual students’ within the definition could set unrealistic expectations for students to receive individualised learning. As a result, the drafting of the proposed condition B1 refers to ‘students’ rather than ‘individual students’.

Resources and academic support

73. In relation to resources and academic support, our proposed definitions of ‘quality’ and ‘standards’ as set out in Table 1 in Annex A of the consultation document were:

- Staff who design and deliver a course are sufficient in number, appropriately qualified and deployed effectively to deliver in practice.
- Physical and virtual learning resources are adequate and deployed effectively to meet the needs of individual students.
- Academic support, including specialist support, is adequate and deployed effectively to meet the needs of individual students.
- Students are effectively engaged in the quality of their educational experience.

74. Some respondents did not support this element of the proposed definitions and suggested that it conflicted with the OfS's intention to be a principles-based regulator, that it was inappropriate for inputs to be monitored from a regulatory perspective, and that this could be detrimental to autonomy and innovation in approaches to learning.
75. Others took the view that it would not be possible to measure resources and academic support through metrics or that any metrics that were developed would not be suitable for the wide range of providers in the sector and could lead to increased data collection.
76. A small number of respondents expressed specific support for the proposed definitions for resources and academic support, with respondents stating that they represent best practice and that reputable providers would already be delivering these.

Staff who design and deliver courses

77. Though the principle of ensuring staffing was sufficient was welcomed by some respondents, points were also made that the inclusion of effective deployment of staff would infringe institutional autonomy as this was a decision for providers.
78. Several respondents wanted further guidance about what constitutes a 'sufficient number' of 'appropriately qualified staff' and what 'effectively deployed' means in practice?
79. One respondent suggested using quantitative baselines for non-outcome requirements, namely as staff-student ratios, because there is a point at which the staff-student ratio is so large (1:100 for example) that teaching cannot be effective.
80. Some respondents provided comments about 'appropriate staff qualifications'. It was suggested that a PhD (or equivalent) should not be the only measure. Suggestions of other indicators of suitable qualifications included metrics of teaching excellence, the industrial expertise of further education college staff, and ongoing continuing professional development and industry relevant experience.
81. Respondents also stated that the OfS should be mindful of the different staffing profiles required for different types of providers, for example small or specialist providers.

Learning resources and academic support

82. Comments from respondents in relation to physical and virtual learning resources were fewer in number than for other parts of the proposed definitions. Agreement was expressed for the proposal that the physical and virtual learning resources should be adequate and deployed effectively to meet the needs of students, while recognising that different students will have different needs, though it was noted this may require additional resourcing for providers to ensure they are met.
83. Some respondents felt that the proposed definitions of resources and academic support required more clarity in the following areas:
 - a. Expectations regarding physical resources, particularly in relation to digital and distance learning.
 - b. What is meant by 'specialist support' and whether this includes student support services. Some respondents thought this should be the case although noted that

specialist advice and support is often offered by external agencies and therefore took the view that this is not the responsibility of the provider.

- c. What is meant by 'the needs of individual students' and to what extent a provider is expected to meet the individual needs of students rather than the collective needs of students.

84. Responses in relation to academic support suggested a number of additions to the definition. These included:

- a. Reference to high quality careers advice, because alongside high quality tuition, employer engagement and effective careers advice are essential components of an employment-focused university experience.
- b. National Student Survey (NSS) score should be included in the definition as a measure of effectiveness.
- c. References to the culture or attitude of the provider should be included because these are the determining factors of the teaching and learning experience.
- d. An explicit reference to providers making courses accessible to disabled students. It was suggested that this should be developed in collaboration with disabled student organisations. Without such a reference there would be a risk that providers would not realise that their duty to making courses accessible is anticipatory.
- e. It should include a reference to monitoring and evaluation to ensure effectiveness.

Student engagement

85. Responses in relation to the proposed definition 'students are effectively engaged in the quality of their education experience' came from a variety of sources, including a number of students' unions. Some of the specific comments made by respondents were:

- a. It is particularly important for providers to listen to students about their educational experience at this time because students and providers are experiencing different ways of learning.
- b. Some respondents said that the definitions should refer to the role of student representatives in student engagement. This was considered important because effective student engagement could not happen without joint consultation with students. It could also minimise the risk of student engagement becoming a tick box exercise.
- c. One students' union considered that the OfS's proposed baseline relating to student engagement was too low because it was placed within definitions of resources and academic support. They felt that the student engagement definition should be integral to all areas of quality assessment (from design to oversight). The respondent stated that an expanded definition and a higher minimum baseline with relation to student engagement would be in the best interests of students. Another suggested that the definition of student engagement could be broader and more ambitious.

- d. It was suggested by some respondents, including some student representative bodies, that the expectation about student engagement in quality was not sufficiently prescriptive in the definitions and could lead to providers determining different definitions of student engagement.

86. Some respondents wanted further explanation, including:

- a. How student engagement would be assessed. In relation to this argument respondents commented that different types of students, for example, young and mature, engage in different ways. Student engagement can be tailored to meet specific student needs; therefore, it would be reassuring to see flexibility included in the regulatory system.
- b. Whether the definition of student engagement referred to the individual or collective student experience, or both. One students' union stated that there should be an explicit reference to individual and collective student engagement as part of the minimum baseline to prevent student engagement requirements being diluted and providers making their own interpretation of effective engagement.
- c. It was not clear what was considered as student engagement under the proposed definition, for example whether it was student engagement in the quality assessment process or something else.

Our response

87. The proposed definitions were drafted to be principles-based rather than rules-based. Although the elements of the definitions that relate to resources do include inputs, they do not specify or require particular volumes or numbers.

Staff who design courses

88. We agree with respondents who observed that the requisite numbers, for example of 'sufficient staff who are appropriately qualified', would vary depending on the type of provider, subject and type of delivery. That is why minimum numbers, particular qualifications or skill types are not specified. In a diverse sector, providers need the freedom to decide what is sufficient and appropriate to ensure the delivery of a high quality course in their context of delivery and for the particular courses they deliver, with the regulator stepping in where it is clear that a provider's arrangements are not sufficient to maintain quality. Although the definitions include inputs, we do not think that the definitions are prescriptive or stifle innovation and therefore we have not made any amendments based on these responses.

89. In relation to the suggestion that there could be a quantitative baseline for staff-student ratios – we do not think this would be appropriate or possible in a principles-based system where the appropriate ratio for different provision, for example digital learning as compared with in person learning, might be very different. As set out in Annex C of the phase one consultation, we are interested in staff-student ratios as an indicator of quality and that might create cause for investigation.

Indicators and data collection

90. In response to the points about creating new metrics, we can confirm that there is no intention to introduce new data returns to collect information or create indicators for the input measures

included in the definitions for resources and academic support. As stated above, the proposed conditions have been drafted in a principles-based way which gives providers freedom to design resources and academic support in light of their particular context.

Learning resources and academic support

91. As we have developed our proposal for revised condition B2, we have carefully considered the requests for further explanation and clarity. The proposed condition set out in the phase two consultation clarifies that the support relates to academic support for students rather than wider student support services and also to providing the resources to cohorts of students, rather than individual students. We agree that a reference to careers advice would be helpful and have included this within the proposed condition.
92. The proposed condition includes definitions of key terms and we have also provided proposed further guidance about how the condition would be assessed, including expectations about resources relating to digital learning.
93. The proposed condition requires a provider to provide the necessary resources and support to ensure a high quality experience for the students it chooses to recruit. We have not included reference to the NSS within the requirements of the condition itself, as has been suggested, but proposed in the phase one consultation that this would be used as an indicator within our approach to monitoring quality. We continue to consider that this is more appropriate because, as respondents have noted, the NSS is a measure rather than an outcome itself.
94. We have also not taken forward the suggestion that a provider's culture and attitude should be included in the condition. We agree that a provider's culture will influence the academic experience for students and nature of support but this is not an outcome in itself that we think is appropriate to regulate.
95. In relation to the suggestion that the definition should be explicit about the need for courses to be accessible for disabled students – we agree with this comment but are not including it within the drafting of the condition because this is already a legal requirement under the Equality Act 2010.

Student engagement

96. In developing proposals for revised conditions, we have considered the comments in relation to student engagement. We agree that effective student engagement is important for all aspects of quality and have given it more prominence by including student engagement in the proposed condition. Proposed condition B2 would require effective engagement with each cohort of students to ensure a high quality academic experience and we consider that this drafting is clear that effective student engagement relates to all aspects of quality.
97. We have also considered whether it is necessary to refer to individual and collective student engagement in the proposed condition but think that both are covered by the broader framing of 'effective student engagement'. The same is the case for the role of student representatives. We have provided further explanation in response to the comments made, in our phase two proposals.

Secure standards

98. In relation to secure standards, our proposed definitions of ‘quality’ and ‘standards’ as set out in Table 1 in Annex A of the consultation document were:

- The standards set by the provider (if it is an awarding body) and achieved by its students are consistent with sector-recognised standards.
- The provider’s assurance arrangements ensure that assessment of students and the resulting awards are valid and reliable.
- Qualifications awarded to students have value at the point of qualification and over time.

99. Table 1 identified the first bullet above as relating to ‘sector-recognised standards’ as defined in section 13 of HERA. The other two bullets relate to quality.

100. A very small number of respondents commented on the proposal to continue to use the existing sector-recognised standards that relate to ‘threshold standards’ specified in the regulatory framework, with one university describing their use as “by now axiomatic”. The few respondents that did comment on this aspect of the proposal were seeking reassurance that the OfS did not intend to add any further elements to the definition, for example the Higher Education Credit Framework.

101. The proposal to add the new sector-recognised degree classification descriptors for Level 6 qualifications adopted by UKSCQA in 2019 generated a large number of responses from a cross-section of providers and other bodies. Comments from respondents that supported the use of the descriptions as a regulatory tool to secure standards included that their use would bring about more consistency in the awarding of degrees across the sector, giving assurance to students, employers and other stakeholders, whilst giving the OfS a tool with which to combat grade inflation.

102. The majority of respondents opposed adding the degree classification descriptions to the definition of sector-recognised standards. The main objections raised were:

- a. The classification descriptions are relatively new and untested, contain flaws and are not precise enough to be effective regulatory tools. Respondents did not explain what these flaws were.
- b. The trends that have emerged from the data on degree classifications are not fully understood yet, as studies are attempting to distinguish between explained and unexplained improvements. One respondent expressed concern at the potential conflating of grade inflation and improved student attainment, which they felt did not acknowledge a providers’ investment in teaching and learning and in student support.

- c. One respondent argued that the descriptors do not currently meet the definition of sector-recognised standards in Section 13(3) of HERA¹² in that they will need to be positively received by the sector in order to comply with that definition.
- d. Imposing the descriptions would be an infringement of providers' autonomy, and therefore contrary to the provisions of HERA, given that in the document that sets out the descriptions,¹³ their use is described as follows: "Providers are, as autonomous institutions, free to consider how these may assist in their standards assurance and course development processes." Consequently, their use as a regulatory tool would restrict providers and hinder academic innovation.

103. Some respondents wanted the OfS to recognise and place more value on the role of externality and on existing mechanisms in place in providers to secure standards, such as the use of external examiners, peer reviewers and Professional, Statutory and Regulatory Bodies (PSRBs) where relevant, as well as asking the OfS to acknowledge the widespread use of the UK Quality Code,¹⁴ Subject Benchmark Statements¹⁵ and the Standards and Guidelines for Quality Assurance in the European Higher Education Area (ESG)¹⁶ as external reference points. A number of respondents stated that these were tried and tested external benchmarks which enabled standards in English providers to be more easily compared to those in the rest of the UK and overseas.

104. Some respondents requested more clarity from the OfS on:

- a. The exact wording of the classification descriptions it proposed to use.
- b. How the OfS would assess whether a qualification had held its value over time.
- c. Which body or bodies would make the regulatory judgements on standards, i.e. the OfS alone or the DQB.
- d. How the standards descriptions would be applied to other levels and types of provision, such as those at Levels 4 or 5 and higher apprenticeships.
- e. How the OfS reconciled the statement in paragraph 17 of Annex B to the consultation, which states "We do not think it would be appropriate to set a minimum numerical baseline in relation to the number of degrees awarded with a particular classification within the assessment of condition B3 – this is a matter for autonomous degree awarding bodies to determine, subject to the requirements currently expressed in condition B4", with its proposal to regulate in this area.

¹² See the Higher Education and Research Act 2017 at <https://www.legislation.gov.uk/ukpga/2017/29/section/13/enacted>.

¹³ Annex D to the Framework for Higher Education Qualifications of UK Degree-Awarding Bodies: see www.qaa.ac.uk/quality-code/higher-education-credit-framework-for-england.

¹⁴ See www.qaa.ac.uk/quality-code.

¹⁵ See www.qaa.ac.uk/quality-code/subject-benchmark-statements.

¹⁶ See www.enqa.eu/esg-standards-and-guidelines-for-quality-assurance-in-the-european-higher-education-area/.

Our response

105. In response to the points about adding further elements to the definition of sector-recognised standards and using the Higher Education Credit Framework for regulatory purposes, we can confirm that there is no intention to do this. The latter did not form part of our proposals because we do not consider it appropriate to require providers to adopt a credit-based approach for the purpose of regulating quality and standards if they do not wish to do so.
106. As is the case in the current conditions of registration, the sector-recognised standards that set out threshold standards include information about the typical volumes of credit associated with a qualification at each level. For the avoidance of doubt, this does not create a requirement for all providers to adopt a credit framework.
107. We recognise that the sector-recognised standards contained in the classification descriptions for Level 6 qualifications adopted by UKSCQA in 2019 are relatively new. However we do not consider they are flawed and consider that they meet the definition of 'sector-recognised standards' for the purposes of section 13(3) of HERA and can be used as part of our regulatory requirements for standards. This is because they were developed by a sector-led group on behalf of the sector, subject to full consultation that tested the content of the standards and their status as 'sector-recognised standards', and have been available in draft or final form to providers since November 2018.¹⁷
108. We agree with respondents who noted that their addition would provide assurance to students, employers and other stakeholders about the consistency of standards for classifications across the sector. We consider that the need to protect standards, including to combat grade inflation, is likely to outweigh considerations of institutional autonomy in this context. In support of this view, we note that the proposed descriptors, while protecting standards, are framed in a sufficiently inclusive way that they would enable innovation in course content, teaching or assessment methods to continue across the sector; indeed, the sector drafted the descriptors with this purpose in mind. Further, our interventions would be focused on cases where there is evidence that standards are not consistent with sector recognised standards and so would be a proportionate response to a legitimate regulatory concern. We have therefore decided to include the descriptors as sector-recognised standards in our proposed revised condition B5 (and proposed initial condition B8) set out in the phase two consultation.
109. We have explained further in paragraphs 57-73 of our phase two consultation our reasoning for proceeding with the inclusion of the descriptors in our proposed conditions B5 and B8.
110. Section 13 of HERA says that a condition of registration regarding standards may relate only to the standards applied in respect of matters for which there are sector-recognised standards. HERA is clear that the OfS determines the requirements that are imposed in a condition of registration and we therefore need to decide which, if any, sector-recognised standards to adopt to meet our regulatory objectives. While we recognise that other standards may exist in the sector, we do not consider that these would meet the definition in HERA of 'sector-recognised standards', for example, the requirements of PSRBs, or the use

¹⁷ See ukscqa.org.uk/2019/10/10/higher-education-sector-announces-new-initiatives-to-protect-value-of-uk-degrees/.

of subject benchmark statements. Providers are able to choose to adopt these as reference points if they wish, and many do so, but we do not consider it to be appropriate to include them in our regulatory requirements. This is because we wish to adopt requirements that provide a minimum baseline of protection for all students (and taxpayers) rather than to adopt standards that may relate to some subject areas or types of provision and that would serve to narrow a provider's scope for innovation.

111. In response to the question about the applicability of degree classification descriptions, we confirm that they are only applicable to awards made for classified honours degrees at Level 6 and so do not apply to other levels of study.
112. The proposals set out in our phase one consultation and taken forward in our phase two consultation are entirely consistent with our view that there should not be a minimum numerical baseline within condition B3 for the number of first or 2:1 degrees that are awarded. The proposals aim to ensure that awards made to individual students meet the sector-recognised standards but this is different to setting a requirement for providers to award a particular number of a particular classification of degrees.

Further information and explanation

113. Further information about the proposed use of the classification descriptions and assessment of the proposed condition is set out in the proposed guidance in the phase two consultation, including the assessment of standards by the DQB and the proposed wording of the sector-recognised standards we propose to use.
114. Our approach to regulating a provider's assessment practices, and the mechanisms it uses to ensure that the qualifications awarded to students hold their value over time, is also set out in the phase two consultation. We consider these matters to relate to the quality of a higher education provider's courses, rather than to the standards applied to those courses.

How the proposed definitions should be assessed

115. The consultation also invited comments from respondents about how the proposed definitions of quality and standards should be assessed for individual providers.
116. Some respondents suggested sources of information not included in the proposals that could be used for assessment of individual providers. These were:
 - a. The completion of an annual self-assessment by providers including supporting evidence, details of any mitigation and any best practice examples.
 - b. Additional sources of student feedback beyond the NSS, such as student surveys targeted at particular aspects of quality and standards, job satisfaction after study, or student health and wellbeing. Other suggestions were more frequent surveys, direct feedback from students' unions and further feedback from postgraduate students (the Postgraduate Taught and Postgraduate Research Experience surveys were cited as examples). Some respondents did however suggest that student feedback may not be objective and may be better used for understanding sector-wide issues rather than regulating individual providers.

- c. Information from peer reviews and external examiner reports as this was seen by some respondents as central to the assessment of quality at a provider.
- d. Feedback from sector specific accreditation bodies.
- e. Other existing provider information sources such as access and participation plan monitoring and annual accountability returns.

117. Other comments made in connection with the assessment of the definitions included:

- a. The role of the DQB and Ofsted (in connection with apprenticeships) is unclear. The European Standards and Guidelines for Quality Assurance (ESG) in the European Higher Education area state that national quality assurance should be undertaken by an independent body, using peer reviewers which the DQB and Ofsted could provide.
- b. The loss of random sampling means a disproportionate reliance will be placed upon complaints and notifications. It would be helpful to know if there is an intention to introduce random sampling in the future.
- c. A return to regular quality and standards reviews for all providers was suggested by a small number of respondents as a way to ensure robust assessment of providers; however some respondents also expressed the view that doing this would not be appropriate for a risk-based regulator.
- d. Providers should also be assessed on their commitment to continuous improvement and development.
- e. The OfS should consider the extent to which it would be able to determine compliance with the proposed definitions of quality and standards via a desk-based exercise, without adding burden for providers through requests for additional contextual or other information.

Our response

118. Our approach to regulation is risk-based and this is established in HERA – we are therefore required to regulate in relation to the risk of a breach of a condition of registration. Our approach is also to regulate to secure a minimum baseline of quality and standards and to use TEF to incentivise excellence and innovation above this baseline and ensure continuous improvement.

Additional sources of evidence for assessment

119. In response to the suggestion of requiring providers to submit self-assessments with supporting evidence, our view is that such a universal requirement, which would apply even where we have no concerns about compliance with quality and standards conditions, would not be proportionate to the regulatory risk posed by a provider. Providers can of course conduct annual self-assessments against the conditions of registration for their own purposes if they wish to ensure that they continue to meet our baseline requirements and to enhance the quality of provision. Condition E2 requires a provider's governing body to have effective management and governance arrangements to continue to comply with the

conditions of registration and therefore we would expect each provider to have mechanisms to test its compliance with all conditions.

120. Similarly, we have discounted suggestions that there should be a return to regular cyclical reviews of all providers because regular quality reviews of a provider where there was no evidence of a quality concern would not be risk-based, would increase regulatory burden on providers and would be disproportionate to the level of risk posed by the vast majority of providers. We take a similar view about the other sources of information suggested for the assessment definitions of quality and standards: our approach to the gathering and use of all evidence should be risk-based and specific to the context of any quality concern.
121. A large number of responses to the consultation made points about regulatory burden and we aim to reduce burden wherever possible. We take the view that the transition from a system of the regular cyclical review of all providers to a risk-based system will have already resulted in a large reduction in regulatory burden for high quality providers.
122. Additional or more frequent student surveys would be an option for evidence to use in the assessment of quality and standards, and we will consider this further, particularly as we continue with our review of the existing NSS and undertake pilot activity for a similar postgraduate survey.
123. We have already produced a guide for students to support them in understanding how to make notifications. Students' unions have been an important source of information and notifications. We would not routinely seek feedback from students' unions about the quality and standards at their provider unless there was a concern – this would not fit with a risk-based approach. However, we are working on a guide for students, students' unions and student representatives to support students to understand the OfS's regulation and how they can use the regulatory environment to make changes for students. We may also seek the views of a provider's students as part of any investigation into quality and standards.

Difficulty of measurement and assessment

124. Further detail on the evidence that would be used in the assessment of the proposed conditions and how conditions would be assessed, including the role of the DQB, is set out in the phase two consultation. We have set out an explanation of the respective roles, including Ofsted, in the quality assessment of apprenticeships at paragraphs 173-189.
125. Our response to comments about the ESG is covered in paragraphs 221-222.

Random sampling

126. The use of notifications and complaints has always been a central part of our risk-based approach to regulation. We suspended development of random sampling as part of a commitment to reduce regulatory burden. A large number of responses to the consultation were concerned about regulatory burden and we may in the future decide to revisit the benefits of a random sampling approach but would need to carefully consider whether the potential burden of such approach would outweigh the benefits.¹⁸

¹⁸ See also our response below relating to regulatory burden, paragraphs 294-306.

Scope of the definitions of quality and standards

Introduction

127. Alongside proposals about how baseline quality and standards should be defined, in our phase one consultation we also set out proposals about the scope of higher education to which those definitions should be applied.
128. We proposed that all of a provider's higher education courses would be subject to the same definitions of 'quality' and 'standards', and therefore be subject to regulation on that basis, irrespective of where or how courses are delivered or who delivers them. This meant, for example, that our proposed approach to regulating quality and standards would cover all types of provision, including higher technical education and apprenticeships and higher education courses that are not funded by the OfS.
129. We also indicated our view that, as now, our proposed approach would apply to modular and flexible provision.¹⁹
130. The rationale for this is that a 'higher education course' is defined in HERA as 'a course of any description mentioned in Schedule 6 to the Education Reform Act 1988'.²⁰ Schedule 6 of the Education Reform Act 1988 is inclusive of activity that is above Level 3 and does not contain requirements for any particular volume of learning.²¹ As the regulator, we set out our proposals for the regulation of baseline quality and standards within this statutory framework. By adopting a wide approach to the meaning of 'higher education course' (consistently with HERA), we are able to protect the interests of the widest group of students by ensuring that their courses have to meet the same quality and standards requirements.
131. We proposed that our regulation of quality and standards would apply to all of the students registered with a registered provider, taught by a registered provider or studying for an award

¹⁹ Consultation on regulating quality and standards in higher education (November 2020), para 34, available at: www.officeforstudents.org.uk/publications/consultation-on-regulating-quality-and-standards-in-higher-education/.

²⁰ See HERA section 83(1).

²¹ See Schedule 6 to the Education Reform Act 1988:

1 The descriptions of courses referred to in sections 120(1) and 235(2)(e) of this Act are the following—

- (a) a course for the further training of teachers or youth and community workers;
- (b) a post-graduate course (including a higher degree course);
- (c) a first degree course;
- (d) a course for the Diploma of Higher Education;
- (e) a course for the Higher National Diploma or Higher National Certificate of the Business & Technician Education Council, or the Diploma in Management Studies;
- (f) a course for the Certificate in Education;
- (g) a course in preparation for a professional examination at higher level;
- (h) a course providing education at a higher level (whether or not in preparation for an examination).

2 For the purposes of paragraph 1(g) above a professional examination is at higher level if its standard is higher than the standard of examinations at advanced level for the General Certificate of Education or the examination for the National Certificate or the National Diploma of the Business & Technician Education Council.

3 For the purposes of paragraph 1(h) above a course is to be regarded as providing education at a higher level if its standard is higher than the standard of courses providing education in preparation for any of the examinations mentioned in paragraph 2 above.

of a registered provider. This would include UK-based and non-UK-based students, courses delivered through partnership arrangements both within the UK and internationally, and students on any course of higher education. Each registered provider would need to ensure it satisfied all our regulatory requirements relating to quality and standards for all of its relevant partnership activity, regardless of whether it was a lead or delivery partner as defined in the regulatory framework.

132. In the phase one consultation we set out how we had had regard for our general duties in formulating these proposals. In particular we noted, with reference to our general duty relating to the need to promote quality, and greater choice and opportunities for students (HERA Section 2 (1) (b)) and our general duty relating to equality of opportunity (HERA Section 2 (1) (e)) that 'opportunities for study are not meaningful if students are able to choose low quality courses delivering weak outcomes, or to continue on such courses, because the regulatory system has endorsed such performance'.²² This position underpinned our proposals that all of a provider's higher education courses should be subject to the same definitions of 'quality' and 'standards' and underpins our responses relating to the application of our regulation to different types of course.
133. Responses to the phase one consultation relating to the application of the proposals to different types of course have been grouped below into the following categories:
 - a. modular and flexible provision
 - b. higher education courses that are not funded by the OfS
 - c. courses delivered through partnership arrangements
 - d. transnational provision (TNE)
 - e. higher technical education (HTE) and apprenticeships.
134. We have also set out at the end of this section a summary of the phase one responses that related to the proposal to remove references to the UK Quality Code for Higher Education (UK Quality Code) from the regulatory framework. These responses have particular relevance for TNE courses as well as a wider relevance to our proposals.
135. A further strand of comments requested further information on the timelines for the introduction of any new policies relating to the regulation of different types of provision. This is also covered in paragraphs 138-140 of our phase two consultation.

Modular and flexible provision

136. A very small number of respondents commented on whether modular and flexible courses should be within the scope of the proposed definitions of quality and standards. By modular courses, we mean arrangements whereby students have flexibility to study individual

²² Consultation on regulating quality and standards in higher education (November 2020), Annex G, paragraph 3: www.officeforstudents.org.uk/publications/consultation-on-regulating-quality-and-standards-in-higher-education/.

modules and where a range of rules may apply regarding the accumulation of credits acquired in this way towards the achievement of an award or qualification. By flexible provision we mean courses with the kind of flexibility described in Advance HE's practical guide.²³ Respondents commented on the compatibility of such courses with the OfS's proposals.

137. Some comments related to differences in motivations and expectations of students studying on modular or flexible courses. Comments on this included:
- a. Those undertaking 'learning for pleasure' are not necessarily motivated by the achievement of qualifications or progression to employment, for which reason the proposals set out in the consultation were inappropriate.
 - b. Quality must be based upon the student's reasonable expectations of their course, which could be different and more limited for flexible and modular courses.

Our response

138. Having had regard for comments received on our phase one consultation and having regard for our general duties, specifically the need to promote quality, and greater choice and opportunities for students (HERA Section 2 (1) (b)) and also our general duty relating to equality of opportunity (HERA Section 2 (1) (e)), we have set out in our phase two consultation the expectation that those proposals can and should be applied to modular and flexible courses. We have explained further in our phase two consultation our reasoning for this proposed approach at paragraphs 31 and 32.
139. On the points raised regarding the different motivations and expectations of students on modular or flexible courses, we accept that different students may have different expectations of higher education, and we want to enable providers to be able to respond to different forms of student demand by offering different kinds of course with different methods of delivery. While we consider that a common baseline is necessary to protect all students, providers are free to develop appropriate variations above that baseline in their approaches.
140. For example, the type of academic support that may be appropriate for a standalone 20 credit module or a multi-year full-time degree may be different in that it would need to reflect the volume and incremental increase in challenge of the longer course and the different ways that students might need to access that support. However, to fail to offer sufficient academic support for a standalone 20 credit module to provide a student with an adequate opportunity of success in that module would, in our view, not be acceptable. Our phase two consultation reflects this approach in the expression of baseline quality and standards requirements that are applicable to all types of course.

²³ 'The phrase 'flexible learning' describes the delivery of higher education level qualifications where one or more of three principal factors - the way it is taught, and where and when it is delivered (as well, sometimes, as what is taught) - have all been adapted to provide choices that enable prospective students to design their study patterns to fit alongside other needs', in Beverley Bennington, Freda Tallantyre, Alison Le Cornu, Flexible learning: a practical introduction for students (2013), page 7 (https://s3.eu-west-2.amazonaws.com/assets.creode.advancehe-document-manager/documents/hea/private/fl_student_guide_0_1568036752.pdf).

Courses that are not funded by the OfS

141. A very small number of respondents commented directly on the inclusion of courses that are not funded by the OfS within the scope of the proposed definitions of quality and standards. The points made included:

- a. Including these courses within the scope of regulation of quality and standards represents overreach by the OfS and this disregards the role of providers in taking responsibility for determining how the quality of their own provision should be judged.
- b. Expanding the scope of regulation to include these courses would be disproportionately burdensome, and therefore not in line with the Regulators' Code.
- c. It would require the OfS to understand the nature of these courses and to take into account the context of the provider in a way that recognises that these are often professional courses valued by employers and students.

Our response

142. As set out in paragraph 1300 the scope of our regulation extends to any higher education course as defined in Schedule 6 to the Education Reform Act 1988. There is no link in HERA or the regulatory framework between courses that are in scope for the regulation of quality and standards by the OfS and the activities that the OfS chooses to fund. Our funding activities are determined by our own policy decisions, having had regard for any ministerial guidance about the purposes to which a finite stream of funding should be directed. Our role in relation to the regulation of quality and standards is to provide protection to the widest group of students. The current conditions B1, B2, B4 and B5 applies to a provider's higher education courses regardless of whether they are funded by the OfS. Where courses are funded by the Education and Skills Funding Agency (ESFA), in order to minimise burden, one factor we would consider in deciding whether or not to intervene in a particular case would be whether another regulator or inspection body, such as the ESFA or Ofsted, is involved in the case.
143. We recognise the importance of ensuring that our approach to regulation will be effective across the diverse range of providers and courses, including vocational and professional courses, that can be found in the higher education sector in England.
144. In response to the point that our proposals would disregard a provider's responsibility for courses not funded by the OfS, our principles- and outcomes-based approach to regulation is designed to allow a provider considerable autonomy to determine what courses to develop and deliver, and how to resource, organise and ensure the quality and standards of those courses, provided that our minimum regulatory requirements are satisfied. Similarly, we have set out our phase two proposals as a principles- and outcomes-based approach that can be applied to the wide range of courses offered by registered providers, including courses with a strong professional or vocational element.
145. Our intention in framing the proposed conditions in this way is to protect the interests of students while giving providers opportunity to determine and take responsibility for how such requirements are met. An approach that placed a greater focus on the manner in which providers discharge their responsibilities for quality and standards, rather than focusing on the quality and standards themselves, would in our view, be likely to be more rules-based

and intrusive on providers' autonomy as well as less direct in its focus on securing a minimum acceptable level of quality and standards in the interest of students and taxpayers.

146. Some respondents commented that including courses not funded by the OfS within the scope of the OfS's regulation would increase the regulatory burden on providers. It was not clear from responses how burden would increase and we have taken this to mean that respondents thought this proposal expanded our regulatory remit and had not understood that current conditions B1, B2, B4 and B5 already include such courses in our regulation.
147. We recognise that any form of regulatory oversight brings with it a burden, but our view is that it would not be in the interests of students for such courses to be outside the scope of the regulatory baseline for quality and standards. We consider that the principles-based approach to the regulation of this type of course set out in our phase one consultation remains proportionate.
148. Having had regard for comments received on our phase one consultation, we have therefore set out in our phase two consultation our view that the OfS should regulate the higher education courses it does not fund on the same basis as other higher education courses. In reaching this view we have continued to have regard for our general duties to promote quality, and greater choice and opportunities for students (HERA Section 2(1)(b)) and our general duty relating to equality of opportunity (HERA Section 2(1)(e)). In reaching a view about the regulatory burden of our proposals we have also had regard for our general duty to use our resources in an efficient, effective and economic way (HERA section 2(1)(f)) and to our general duty to uphold the principles of best regulatory practice, including that regulatory activities should be proportionate and consistent and targeted only at cases in which action is needed (HERA section 2(1)(g)(i)). We have also had regard for the expectation in the Regulators' Code that 'regulators should avoid imposing unnecessary regulatory burdens through their regulatory activities' (Regulators' Code section 1.1).

Partnership arrangements

149. A very small number of responses to the consultation commented on the proposed inclusion of courses delivered through partnership arrangements within the scope of definitions of quality and standards and in particular the impact on the lead provider in a partnership arrangement.
150. One respondent welcomed the inclusion of courses delivered through partnership arrangements to be included as part of a lead provider's responsibility for quality and standards, although the reasons they were in favour were not given. However, most of the other responses suggested that the proposal would create disincentives for providers to enter into subcontractual or validation arrangements. This was because lead providers may take the view that our proposal could increase the risk that they would not be able to comply with quality and standards requirements in relation to their delivery partners, and they would therefore be less inclined to remain in, or enter new, partnerships. This could lead to a reduction in partnerships across the sector.²⁴ Respondents suggested that this would damage the contribution of partnership working to regional economies and labour markets

²⁴ See the definitions of 'subcontractual agreement' (also referred to as 'franchise') and 'validation agreement' in the glossary to the Regulatory Framework: www.officeforstudents.org.uk/advice-and-guidance/regulation/the-regulatory-framework-for-higher-education-in-england/.

and reduce the range of opportunities for underrepresented groups of students to enter higher education.

151. It was also suggested that there is evidence of providers terminating partnership arrangements in response to the OfS's consultation proposals.
152. A few respondents sought more information about the proposals, for example whether:
- a. The proposals would create double regulation where two registered providers were in partnership. Respondents considered it was unclear how the OfS's proposals would apply to a registered provider delivering courses on behalf of an unregistered awarding body such as Pearson, because unregistered awarding bodies also have responsibilities for quality and standards.
 - b. A students' union suggested it is not yet clear how the proposal would affect new higher education providers or students studying with providers whose provision is awarded by another higher education provider.
153. Comments received on partnership activities involving partners outside England (including partners within the other UK nations) are discussed in the section on transnational education.

Our response

154. When we refer to partnership arrangements, we mean any arrangement where a registered provider works with one or more other partners to provide a higher education course (where 'higher education course' is as defined in HERA).²⁵ This includes partnerships between two registered providers, a registered provider and an unregistered provider, and a registered provider and an unregistered awarding body, such as Pearson.
155. We consider that no registered provider involved in a partnership can abrogate its responsibilities for quality and standards to other organisations within the partnership. This includes wherever a registered provider is using its degree awarding powers within a partnership. All our proposals are intended to foster behaviours in providers that will ensure that students experience the required minimum level of quality and standards – whether or not they study through a partnership arrangement.
156. We do not consider that our phase one proposals for the regulation of partnership arrangements would have a negative impact on competition and choice (as was suggested by some of the consultation responses). In so far as our conditions set out baseline requirements for the quality and standards of higher education courses, this would create minimal restriction of competition and choice for students, as providers would still be able to offer higher education courses with quality and standards that are above the baseline required of them. We do not consider that proposals to ensure that courses meet baselines for quality and standards would disincentivise any provider to engage in partnership activity that meets the baseline and we are not aware of this happening in practice. We will continue to monitor student choice, including through the OfS's key performance measure (KPM) 9

²⁵ See above, paragraph 130.

(diversity of subject choice by region of domicile).²⁶ If we were to identify a problem in practice in the future, we would work with the sector to understand what was driving providers' behaviour. We would then look for any steps we could take to support choice for students through partnership activity without compromising baseline quality and standards.

157. In developing the proposals we have had regard for our general duty to encourage competition between English higher education providers in connection with the provision of higher education, where that competition is in the interests of students and employers (HERA section 2(1)(c)), and the principle in the Regulators' Code that regulators should carry out their activities in a way that supports those they regulate to comply and grow (Regulators' Code section 1).
158. Having had regard for comments received on our phase one consultation, we have therefore set out in our phase two consultation the expectation that those proposals should be applied to courses that are delivered through partnership arrangements. As we have set out in our phase two proposals, we consider that the requirements of each of the proposed B conditions should apply to each registered provider that is engaged in partnership activity that is within the scope of the OfS's regulation. In reaching this view we have also continued to have regard for our general duties relating to quality, and greater choice and opportunities for students (HERA Section 2(1)(b)) and also our general duty relating to equality of opportunity (HERA Section 2(1)(e)). We have set out further detail in our phase two consultation in paragraphs 30-38.

Transnational education (TNE)

159. A small number of respondents commented on the proposal to include TNE courses in the scope of regulation of quality and standards. For these purposes, by 'TNE' we mean higher education that is delivered by English providers in a country other than the UK. This would include activities such as distance learning, where a student is permanently based outside the UK, even if the delivery of the course takes place from England. We proposed including non-UK based students in the scope of our regulation. Students studying through that mechanism are entitled to regulatory protection for quality and standards on the same basis as those studying in the UK.
160. There was some direct support for the proposals, with respondents welcoming the inclusion of TNE as it recognises the wide range of courses currently being provided by English providers and focuses on students outside the UK.
161. Even where respondents disagreed with the proposed approach, there was a broad understanding that TNE activity would be covered by future regulation. Some respondents, however, wanted further detail about the proposed approach, including where partnership arrangements are part of a provider's TNE activity.
162. Other comments included:

²⁶ See www.officeforstudents.org.uk/about/measures-of-our-success/experience-performance-measures/diversity-of-subject-choice-by-region-of-domicile/.

- a. The OfS would be exceeding its powers and trying to inappropriately extend its regulatory reach beyond UK borders. This would undermine providers' autonomy to manage quality and standards in their TNE courses.
- b. Providers' TNE activity is not publicly funded and may, therefore, be outside the OfS's regulatory remit.
- c. Imposing regulatory standards that are designed for courses delivered in the UK onto courses delivered internationally with partners may not be appropriate.
- d. Courses delivered as part of a provider's TNE activity are different to UK campus-based courses and so should be subject to different requirements.
- e. UK higher education and its TNE activity is successful because of strong quality assurance processes which give confidence to overseas governments and accreditation authorities. Any change to the way TNE activity is regulated would require substantial engagement with these stakeholders. There needs to be a clear statement about how TNE activity would be regulated to ensure that UK higher education maintains its strong reputation around the world.
- f. Respondents considered the consultation was not clear about how the OfS's approach to regulation would align with the QAA's development of a new approach to TNE provision.

Our response

163. We note that some respondents asked whether a registered provider's TNE courses were within our regulatory remit. As set out in paragraph 130 of the introduction to this section, the scope of our regulation as set out in law is not determined by whether a course is publicly funded, or where or how it is delivered. The statutory definition of a higher education course in HERA makes no reference to the location of a course or the location of students at the registered provider.
164. Some respondents also took the view that our regulation of TNE courses provided by registered providers might undermine providers' autonomy. Our general duties (section 2(1)(a)) require us to have regard to the need to protect institutional autonomy. In the same way that we regulate the quality and standards of any other course, our proposed approach to TNE courses would ensure that the interests of students are protected while maximising the role for institutional autonomy. We do this by being risk-based, which minimises regulatory intervention where the risk is judged to be low. We also do it by being principles-based, which maximises the scope for providers to develop distinctive and innovative courses provided these meet the baseline expectations.
165. With reference to responses that did not agree that TNE courses should be subject to the same requirements as courses delivered in England (or within the UK), as we have set out in our responses regarding other types of course, our view is that it would not be in the interests of students on TNE courses for those courses to be outside the scope of the regulatory baseline for quality and standards.
166. At the same time, we acknowledge the points made by respondents about the interests of overseas governments and agencies in the TNE activities of English higher education

providers and the importance of this for the success of UK higher education. It is our view that the regulation of quality and standards of TNE courses provided by registered providers on the same basis as English-based courses in the ways proposed would provide increased transparency about our approach and support the confidence of students and international stakeholders that the TNE courses of English higher education providers are being effectively overseen by the regulator in England. As we also discuss in the next section on the removal of references to the UK Quality Code, we intend to engage actively within and outside the UK with key stakeholders about our proposals for regulating TNE and how the regulatory approach in England sits within a broader UK regulatory approach.

167. With reference to how our regulation interacts with that of other nations that have an interest in the TNE courses of English higher education providers, we consider that our proposals are proportionate because they are both principles-based, giving a high degree of flexibility to providers in the way that they are met, and risk-based, meaning that our attention would be focused on those issues and providers that represent greatest risk to students. As a result of these inherent flexibilities, our approach should align well with the differing approaches of other regulators that have an interest in the same courses. Our regulatory framework says that we will take into account any action taken by another regulator to remedy the increased risk or breach in determining whether and how we might intervene with a provider. We would be more likely to intervene where an increased risk or a breach is not being remedied by another regulator's actions.²⁷
168. Some responses asked about the relationship between the OfS's proposals and the QAA's Quality Evaluation and Enhancement of UK Transnational Higher Education Provision.²⁸ The OfS is the statutory regulator for English higher education providers and we set regulatory requirements for quality and standards, monitor providers' compliance with these requirements, and take enforcement action where these are not met. This means that the proposals set out in our consultation would constitute a binding regulatory requirement placed on all registered providers. No other body is able to put in place binding regulatory requirements in this way for providers in England. The QAA offers its paying membership the opportunity to take part in a review process that covers TNE activity. Participation in the QAA's TNE review process is entirely voluntary and the outcomes of the process, whether positive or negative for a provider, have no bearing on our judgement about whether that provider complies with our regulatory requirements. There is therefore no regulatory benefit or disbenefit attached to taking part in the QAA's voluntary TNE process and each provider will need to reach its own view about whether to participate.
169. Having had regard for comments received on our phase one consultation, we have therefore set out in our phase two consultation our view that TNE courses should be within the scope of our regulation of quality and standards. It is in the interests of all students to benefit from regulatory protection where a registered provider is involved in their higher education course, including where that course is delivered outside the UK. In reaching this view we have also continued to have regard for our general duties regarding the need to promote quality, and

²⁷ See the regulatory framework, paragraph 167: www.officeforstudents.org.uk/advice-and-guidance/regulation/the-regulatory-framework-for-higher-education-in-england/.

²⁸ See www.qaa.ac.uk/international/transnational-education.

greater choice and opportunities for students (HERA Section 2 (1) (b)) and also our general duty relating to equality of opportunity (HERA Section 2 (1) (e)).

Higher technical education (HTE) and apprenticeships

170. A small number of respondents commented on the inclusion of higher technical education and higher apprenticeships within the scope of the definitions of quality and standards. While respondents did not disagree with the inclusion of this type of course in the scope of the definitions, they raised what they considered to be a number of challenges with such inclusion. Nearly all of the points raised related to apprenticeships rather than higher technical education more generally, and specifically commented on the respective roles of the OfS and Ofsted in the regulation and quality assessment of this provision.
171. The main points raised relating to the role of the OfS and Ofsted in the regulation of apprenticeships were:
- a. There is a lack of clarity about the role of each organisation in the regulation and quality assessment of apprenticeships, about how different regulatory requirements interact, and a risk that requirements could be contradictory. Respondents requested that the OfS provides more information about the organisations' respective roles and requirements.
 - b. One respondent added that the role of the Institute for Apprenticeships and Technical Education (the Institute) in approving Higher Technical Qualifications (HTQs) requires similar clarification.
 - c. Beyond clarity, there is a risk that shared responsibility will lead to duplication of requirements, and therefore excessive burden for providers in complying.
172. Other points raised by respondents were:
- a. It would be helpful to understand how the OfS will use the Framework for Higher Education Qualifications (FHEQ) in relation to the standards of HTQs, as the latter may be solely designed to meet occupational standards.
 - b. Professional accreditation could be used to support quality assessment and development of vocational degrees in heavily regulated sectors such as engineering, allowing the OfS and Ofsted to focus on other aspects of regulating vocational provision which are not achieved through professional accreditation.
 - c. The consultation should have included a framework for the government's proposals for HTQs as any changes proposed by the OfS should have some degree of stability in the face of predictable changes to the system.
 - d. A request that the OfS should undertake a consultation on how it will seek to regulate higher technical education and the data requirements for these courses.

Our response

173. As set out in the introduction to this section, our proposals in relation to the regulation of HTE and apprenticeships at Level 4 and above are consistent with the scope of our regulatory powers as set out in HERA.
174. The ESFA has recently updated the Apprenticeship Accountability Statement²⁹ to reflect recent changes in the inspection regime, and to set out the roles of the different organisations involved in the quality assurance of apprenticeships.
175. Overall accountability for the quality of apprenticeships rests with the Department for Education (acting through the ESFA) and, in so far as it is exercising its statutory duties, the Institute. The DfE also has responsibility for maintaining the Register of Apprenticeship Training Providers. It is therefore responsible for managing the apprenticeship training provider market and will intervene to address quality concerns where necessary.
176. The OfS has statutory responsibility (under section 23 of HERA) to assess, or to make arrangements for the assessment of, the quality of, and the standards applied to, higher education provided by registered providers. In the context of the current consultation, assessment is for the purpose of determining whether the provider satisfies any initial or ongoing conditions of registration relating to quality or standards.
177. Apprenticeships at Level 4 or above fall under the definition of a higher education course as defined in HERA and therefore are in scope of OfS regulation. There is therefore a dual regulatory responsibility for the quality of apprenticeships, although in practice the OfS is less likely to take regulatory action in relation to the quality of apprenticeship training for the reasons set out in paragraph 180.
178. Before 1 April 2021, the ESFA relied on Ofsted inspections for a judgement about the quality of apprenticeship training at Levels 2-5 and it relied on the OfS's judgements in relation to the quality of apprenticeship training delivered at Level 6 and 7. Ofsted inspects apprenticeships against its further education and skills inspection handbook³⁰ and all providers receive an inspection shortly after they start delivering apprenticeships. As we operate a risk-based system, we only review the quality and standards of apprenticeship provision where there is evidence of a concern. In those circumstances we would normally have asked the DQB to undertake a quality and standards review according to published guidance.³¹
179. The Review of Post-18 Education and Funding 2019 (the Augar review)³² recognised the complexity of the regulation of apprenticeships including the different inspection and quality assessment systems operated by Ofsted and the OfS. The review recommended that Ofsted should inspect apprenticeship training at all levels – ensuring consistent judgements and

²⁹ See www.gov.uk/government/publications/apprenticeship-accountability-statement.

³⁰ See www.gov.uk/government/publications/further-education-and-skills-inspection-handbook-eif.

³¹ See www.qaa.ac.uk/reviewing-higher-education/types-of-review/quality-and-standards-review.

³² See

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/805127/Review_of_post_18_education_and_funding.pdf [PDF].

approaches across this provision. DfE accepted this recommendation and announced in September 2020 that, from 1 April 2021, Ofsted would become responsible for the inspection of apprenticeship provision at all levels.³³

180. Ofsted will therefore inspect all apprenticeship training at registered providers and will report its judgements to the ESFA. The ESFA, as the body with overall accountability for the apprenticeship programme, will determine any action necessary on the basis of its intervention policy.³⁴ Ofsted will also report its judgements to the OfS. To avoid the potential for duplication, we will take a risk-based approach and, as set out in the intervention factors in the regulatory framework, will take account of any action taken by another regulator to remedy an increased risk or breach of a condition before deciding to intervene in a particular case. Where we can take assurance from ESFA that it can take appropriate action through its own intervention policy, we are unlikely to take regulatory action in relation to the quality of a provider's apprenticeships ourselves.
181. The exception to this is in relation to our regulation of student outcomes. We proposed in the phase one consultation to include apprenticeships as a distinct group in our regulation of student outcomes. Further detail on this, and our consultation proposals in respect of this provision, will be included on our forthcoming consultation in autumn 2021 on the regulation of student outcomes.
182. In terms of regulating through proposed conditions B1, B2, B4 and B5, we propose to consider the judgements provided by Ofsted. We will decide whether these provide evidence that there might be quality or standards concerns beyond the apprenticeships at a provider in relation to these conditions. More detail on our proposed wording of these conditions, and the effect of them, is set out in our phase two consultation.
183. We propose to continue, through our risk-based approach to monitoring, to identify any quality concerns that may arise with apprenticeships. If concerns are flagged – for example, if an apprentice or employer makes a notification to us raising concerns – we would be likely to refer these to the ESFA as appropriate in the first instance.

External Quality Assurance

184. The OfS maintains a role in the quality assessment of apprenticeships in relation to the External Quality Assurance (EQA) of End Point Assessment Organisations (EPAO). All apprentices undertake an end-point assessment at the end of their apprenticeship to confirm they have achieved occupational competence. EPAOs are responsible for undertaking end-point assessments.
185. An integrated degree apprenticeship is where a degree qualification is included in the apprenticeship and assessment relating to the degree qualification is fully integrated with the

³³ See

assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/922000/L6_and_L7_Apprenticeships_Ofsted_20200924.pdf [PDF].

³⁴ See www.gov.uk/government/publications/removal-from-register-of-apprenticeship-training-providers/removal-from-register-of-apprenticeship-training-providers-and-eligibility-to-receive-public-funding-to-deliver-apprenticeship-training.

end-point assessment. In these circumstances the provider delivering the degree within the apprenticeship also acts as the EPAO and undertakes the end-point assessment.

186. A non-integrated degree apprenticeship is where a degree qualification is included in the apprenticeship but assessment relating to the degree qualification is not integrated with the end-point assessment. However, the degree qualification must be achieved prior to the apprentice undertaking an end-point assessment. In these circumstances the provider delivering the degree as part of the apprenticeship is responsible for the assessment related to the award of the degree; however, an independent EPAO would be responsible for undertaking the end-point assessment of the apprentice.
187. EQA monitors the delivery of end-point assessments to ensure that they are fair, consistent and robust across different apprenticeship standards and between different EPAOs.
188. The Institute is responsible for the oversight of EQA. It consulted on a simplified approach from February to May 2020, which proposed that the OfS would be responsible for EQA for OfS registered providers that deliver integrated higher and degree apprenticeships (and are therefore responsible for delivering the end-point assessment themselves rather than through an independent EPAO).
189. Further detail in relation to this work is set out in the phase two consultation document in paragraphs 127-137.

Relationship with Institute approval for HTQs

190. The Institute's role in the approval of HTQs is independent of OfS regulation. The DfE determined through consultation³⁵ that an approval process was necessary, similar to the development of apprenticeships, to test qualifications against occupational standards. The OfS may provide information in accordance with HERA to the Institute during the approval of HTQs. On an ongoing basis the OfS will regulate the quality and standards of HTQs as part of its normal regulatory activity.
191. We have also considered the comments received in response to the consultation that HTQs may be solely designed to meet the Institute's occupational standards and the question about how the OfS would use the FHEQ in relation to an assessment of the standards of these courses. Courses that are put forward for approval to the Institute need to meet occupational standards to gain approval, however where courses leading to approved qualifications meet the definition in HERA of a 'higher education course', as described in paragraph 130, they are currently in scope for OfS regulation. This means that they are in scope when we make judgements about whether a provider satisfies the sector recognised standards set out in the regulatory framework.
192. The sector recognised standards set out in the regulatory framework describe the names of awards and the expected learning outcomes and skills which represent the threshold academic standards required for that level of study.³⁶ The standards also set out the

³⁵ See www.gov.uk/government/publications/higher-technical-education-consultation-analysis.

³⁶ The sector recognised standards currently included in the regulatory framework are those set out in Table 1, and in paragraphs 4.10, 4.12, 4.15, 4.17 and 4.18, and in paragraphs 6.13-6.18, and in the Table in Annex C, in the version of 'The Frameworks for Higher Education Qualifications of UK Degree Awarding Bodies' published in October 2014 (FHEQ).

minimum typical volume of credit associated with each type of award. Occupational standards might require additional skills for a student to be occupationally competent – this is already common in vocational qualifications, where for example students may be required to demonstrate competency in a practical skill that is not at higher education level but professionally important in order to meet the requirements for the higher education award.

193. HTQs therefore need to meet both occupational and sector recognised standards and we do not think these are conflicting requirements because it is possible for qualifications to meet both sets of standards and so meet all the requirements for an HTQ.
194. We understand that the government intends to consult further on the approach to HTQs in its forthcoming consultation on Lifelong Loan Entitlement (LLE). As we have developed our proposals for the phase two consultation, we have considered whether our proposed approach will accommodate HTQ courses and are confident that it will. However, depending on how the government develops its approach to HTQs and as suggested by respondents, it may be necessary for us to conduct a further consultation in the future on our approach to their regulation.
195. Respondents made comments that professional accreditation could be used to support quality assessment allowing the OfS and Ofsted to focus on other aspects of regulation. We have taken this to mean that respondents were suggesting that PSRBs should have responsibility for the quality assessment of apprenticeships. As set out above, the OfS is unlikely to undertake direct assessment of the quality of apprenticeship provision, which has been subject to Ofsted inspection or to take regulatory action where the ESFA has already intervened. We are not therefore intending to undertake the kind of routine detailed review of providers that is suggested by involving PSRBs in this activity.

Removal of reference to the UK Quality Code

196. Alongside the proposed definitions of quality and standards, in our phase one consultation we proposed that we would remove references to the UK Quality Code from the guidance in the regulatory framework, and from any guidance that would underpin any revised B conditions, in order to reduce complexity and improve clarity about our regulatory requirements.
197. The regulatory framework's current references to the UK Quality Code are contained in the guidance accompanying Conditions B1, B2, B4 and B5.³⁷ The regulatory framework states that 'in judging whether a provider is complying with these conditions, material that the OfS may consider includes any assessment that the DQB may make about the extent to which the provider is meeting the relevant expectation of the UK Quality Code'.³⁸ The core practices of the UK Quality Code are also included as non-exhaustive behaviours that may indicate compliance with conditions of registration in the regulatory framework.

³⁷ Specifically, the regulatory framework states that assessing a provider's compliance with Conditions B1, B2, B4 and B5 will include a review by the DQB to assess compliance against the expectations and core practices of the Quality Code. The OfS may consider the DQB's assessment in evaluating compliance with these conditions.

³⁸ See the regulatory framework, paragraph 336 www.officeforstudents.org.uk/advice-and-guidance/regulation/the-regulatory-framework-for-higher-education-in-england/.

198. A small number of respondents agreed that there was currently a lack of clarity about the OfS's regulatory requirements because of the unclear relationship between the content of the regulatory framework and the UK Quality Code and that the UK Quality Code did not provide the level of clarity or transparency that a regulator may require.
199. A substantial number of respondents did not agree and made other points about the proposal to remove references to the UK Quality Code from the regulatory framework. Many placed value on the role played by parts of the UK Quality Code or by the UK Quality Code as a whole. The main comments made by respondents about the proposals were:
- a. The UK Quality Code is well understood and respected nationally and internationally and so removal of references to it in the regulatory framework would damage the reputation of higher education in England, or across the UK more generally with overseas stakeholders. This would weaken the brand of higher education in the UK and could damage the transnational activities of providers, or their international recruitment and be contrary to government policy to recruit more international students.
 - b. Existing higher education quality measures like the UK Quality Code and subject benchmark statements already ensure high performance and consistency in the sector's approach to the management and oversight of quality and standards through an approach that is collaborative, sector-led and mature.
 - c. The introduction of the OfS's proposals alongside the existing sector quality measures would reduce clarity and increase complexity and burden for providers and other stakeholders.
 - d. Important material set out in the UK Quality Code is missing from the OfS's proposals, such as coverage of complaints and appeals, which assist providers in the maintenance of quality and standards.
 - e. Points were made, in particular by some students' unions, that the proposals in the consultation place less emphasis on collective student engagement than the UK Quality Code, potentially diminishing the role played by student unions in improving the quality of student experiences.
 - f. The overall picture of how quality is assessed across the sector and across the different nations of the UK, presents a confusing picture to stakeholders, such as prospective students, school and college teachers and employers. The OfS should aim for maximum coherence between its regulation and other aspects of quality assessment, notably the UK Quality Code, but also with TEF and the activities of PSRBs and other relevant bodies.
200. Other arguments presented by respondents against the proposals included:
- a. There is a lack of clear rationale as to why the current system is not suitable, especially in reference to departure from the UK Quality Code. Also, the UK Quality Code could provide the OfS with a useful reference point for objective assessment of some of the proposed revised definitions of quality and standards. Alternatively, it was stated that the only route to assurance of standards is through the external examiners process and the UK Quality Code.

- b. The UK Quality Code has been subject to extensive consultation and sector investment, with the revised shorter code being agreed by the sector recently.
 - c. The OfS should specifically consider the impact of its proposals on the devolved administrations. The latter should have been consulted in relation to these proposals and should be consulted on any future proposals, including removal of the UK Quality Code.
 - d. The proposals could mean that the UK higher education system would not meet the European Standards and Guidelines (ESG) and this could cause damage to the brand of higher education in England and the UK and impact on international partnerships.
 - e. The proposals would create challenges for providers with partnership arrangements operating across the UK's borders because of the operation of different arrangements for the regulation of quality and standards in the different nations of the UK. This would include impact on awarding providers in the other nations of the UK working in partnership with delivery partners in England. Also, removal of references to the UK Quality Code would mean that there would no longer be a UK-wide assurance of quality for students moving from one devolved administration to another in order to study, with more variation in quality and standards than currently exists.
 - f. The removal of references to the UK Quality Code as a result of the OfS's proposals would require a significant investment of resources by providers at the time of a global pandemic.
 - g. The proposals to remove reference to the UK Quality Code would not be good regulation as they would not be consistent with the first principle in the Regulators' Code (that 'Regulators should carry out their activities in a way that supports those they regulate to comply and grow') because the perceived impact on the reputation of UK higher education of the proposals would not support providers to 'comply and grow'.
 - h. One provider commented that the statutory responsibility for setting standards in England sits with the QAA (as the DQB) not the OfS, and that the proposals did not reflect this. A small number of others commented that it was the core practices in the UK Quality Code rather than the regulatory framework that needed to be changed because it was the core practices that set out what is required of providers in England.
201. An alternative proposal was that to meet the needs of the OfS a process could be put in place, involving UKSCQA, to agree necessary updates to the UK Quality Code so that quality requirements can remain consistent across the UK. Another proposal was to return to the use of the previous UK Quality Code.
202. Respondents also commented that if the proposals went ahead, the OfS would need to ensure clear alignment between its requirements and the UK Quality Code remained, including clarity between requirements and optional guidance.

Our response

203. Our proposals to remove references to the UK Quality Code are designed to address unnecessary complexity and reduce the risk of there being a lack of clarity about our requirements, which we consider is introduced by references to the UK Quality Code.
204. We think it is important that our regulatory requirements are clear for the providers we regulate and other stakeholders, and that they are expressed in a way that allows us to take enforcement action when we consider that is necessary to protect the interests of students and taxpayers. The importance of clarity is recognised in section 2 of HERA, which requires us, in performing our functions, to have regard to the principle that our regulatory activities should be transparent. Paragraphs 5 and 6 of the Regulators' Code also underline the importance of clarity, and state that regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply and that regulators should ensure that their approach to their regulatory activities is transparent.
205. We are concerned that the way that the regulatory framework is currently associated with the UK Quality Code means that providers and other stakeholders are unclear about which of the content has regulatory force, and which is advisory. The regulatory requirements in England are the statements of the conditions of registration (the yellow boxes in the regulatory framework) supplemented by the guidance contained in the regulatory framework and its annexes.
206. The references to the UK Quality Code currently included in the regulatory framework in paragraphs 336(a), 338(a), 343(a), 347(a) and the use of the core practices in the table in paragraph 355 are either examples of 'material that the OfS may consider' or 'non-exhaustive examples of behaviours that may indicate compliance or non-compliance with each condition'. This means that they provide guidance as to what the OfS may consider in taking regulatory action, rather than amounting to specific regulatory requirements. We consider there could be further potential for confusion because only the expectations and core practices of the UK Quality Code are referred to in the regulatory framework (i.e. only parts of the UK Quality Code). The other elements of the UK Quality Code – the common practices and advice and guidance – are not referred to in the regulatory framework. Other components of the broader 'academic infrastructure' such as subject benchmark statements are also not referred to in the regulatory framework.
207. Some respondents to the consultation do not seem to have understood that the various elements of the UK Quality Code and other reference material previously published by the QAA in its role as a membership organisation for providers in England do not form part of the OfS's regulatory requirements. We consider that this misunderstanding is apparent, for example, where there have been calls to change the OfS's regulatory requirements by amending the UK Quality Code. Our regulatory requirements must be set out in the regulatory framework rather than other documentation. This misunderstanding confirms our view that regulatory requirements are currently not clear.
208. It is also our view that the UK Quality Code, including its common practices, advice and guidance, risks creating a homogeneous approach to quality and standards assurance that stifles innovation and overly focuses on policy and process rather than outcomes for students. By contrast, our intention is to establish an approach to regulation that protects all

students through the articulation of a clear minimum baseline for quality and standards in the regulatory framework, while enabling competition, student choice, provider autonomy and innovation to develop freely above the baseline.

209. Taken together, our concern for clarity coupled with our concerns about the UK Quality Code as a model overall provide a compelling rationale for the approach we have proposed in our phase one proposals, namely to remove references to the UK Quality Code from the regulatory framework completely. We consider this will avoid confusion about what our regulatory requirements are. In reaching this view we have had regard for section 2 of the HERA and paragraphs 5 and 6 of the Regulators' Code, discussed above.
210. As an alternative, we have also considered whether we could adopt compliance with the current UK Quality Code, or a revised version of it, as regulatory requirements, for example by requiring compliance in a condition of registration. This would positively resolve points made in responses relating to the familiarity of the sector in England, and the UK more generally, with the UK Quality Code. Imposing requirements that are already familiar to the sector could have certain benefits, for example compliance may be more likely and regulatory burden may be reduced because providers do not have to become familiar with a new set of requirements. It would also be a way of signalling a whole-of-UK approach to quality.
211. We have discounted this approach because we do not consider the content of the UK Quality Code to be drafted in a way that could be imposed as a legally-binding requirement in a condition of registration. Key terms are not defined and there is ambiguity about the circumstances in which some provisions might apply. Expressing a regulatory requirement without such clarity would mean that we would be unlikely to be able to take enforceable regulatory action where we judge this is necessary to protect the interests of students and taxpayers. From providers' perspective, we consider this lack of clarity is also unhelpful because it is essential within the sort of regulatory model established by HERA and the regulatory framework that providers have absolute clarity about what is expected of them. Providers' understanding on this point is signalled by the number of consultation responses identifying the importance of there being more clarity about how quality and standards are defined in any changes to the conditions.
212. We consider that the UK Quality Code, including its associated common practices, advice and guidance, goes well beyond what we would consider to be a statement of minimum baseline for quality and is therefore not suitable to serve as a basis for defining baselines for quality. The UK Quality Code is also articulated in a way that would make it suitable for some approaches to the external assurance of quality and standards, but makes it unsuitable for the purposes of the OfS, for the reasons set out in the preceding paragraph. For these reasons we also consider that it would not be possible to secure the necessary updates to the UK Quality Code by negotiation with other interested parties as part of an approach leading to the incorporation of those changes as legally-binding requirements into our regulatory framework. We think it is necessary to recognise that, within the devolved arrangements for the regulation of higher education across the UK, different nations will inevitably need to set out their regulatory approaches in ways that reflect their different legal and policy frameworks. It would be unreasonable to expect the other nations of the UK to adopt an updated UK Quality Code that we considered was sufficient for OfS regulatory purposes where this would not be in line with their own national approaches to regulation.

213. Although we recognise the maturity of much of the ‘academic infrastructure’ that sits around the UK Quality Code and the sector’s investment in this over a number of years, these considerations cannot outweigh our need to set legally-binding requirements in conditions of registration, in the interests of students and other stakeholders. In reaching this conclusion we have had regard for our general duties for quality, and greater choice and opportunities for students (HERA Section 2(1)(b)) and our general duty relating to equality of opportunity (HERA Section 2(1)(e)). We have also considered our primary regulatory objective that students from all backgrounds should be able to receive a high quality academic experience.³⁹ If we are unable to set requirements that we can then enforce, we will be unable to protect groups of students from following (and paying for) courses of higher education that do not meet clear baseline requirements with regard to quality and standards. We have also had regard for principle 4 in the Regulators’ Code that we should ensure clear information, guidance and advice is available to help those we regulate.⁴⁰
214. In developing our phase two proposals, we have also carefully considered comments received that our phase one consultation proposals would increase regulatory burden through removal of references to the UK Quality Code. Over and above the regulatory requirements imposed by the OfS, a provider can decide to use other reference material in its activities and there is nothing to prevent a provider from making use of the UK Quality Code, and other external reference points, if it considers that to be helpful. Our expectation, however, is that mature, confident, high quality providers would wish to take advantage of the flexibility of the OfS’s principles-based approach, rather than design their internal approach to follow the more rules-based approach set out in the UK Quality Code.
215. This point is connected to our view of regulatory burden. Our proposed requirements are less onerous and clearer than following the UK Quality Code and the other reference points in the ‘academic infrastructure’. Our principles- and outcomes-based approach sets out what is expected of providers relating to quality and standards in a way that expressed what is required with clarity, but still allows a provider to determine how it wishes to satisfy those requirements. We consider that this approach minimises regulatory burden because, above a baseline that applies to all, providers are free to work and innovate as they see fit. This approach is proportionate because it does not impose the overhead on providers of having to conform in detail to a particular approach to how they maintain the quality and standards of courses at or above the baseline. Unlike approaches that look to define quality through adherence to particular types of process in a rules-based approach, it also only sets out requirements of any kind at the baseline.
216. However, we fully recognise the continued place of English higher education as one part of a UK-wide sector. We have carefully considered the points made in consultation responses, including those from organisations in the devolved administrations, and organisations with cross-UK interests, that the removal of references to the UK Quality Code in the regulatory framework would damage the reputation of higher education in England, or across the UK more generally, with overseas stakeholders. Our view is that it is not the UK Quality Code as such that generates a reputational benefit, noting that the UK Quality Code is used in

³⁹ HERA 2 (1) (b) www.legislation.gov.uk/ukpga/2017/29/section/83/enacted; regulatory framework paragraph 3 <https://www.officeforstudents.org.uk/advice-and-guidance/regulation/the-regulatory-framework-for-higher-education-in-england/>.

⁴⁰ The Regulators’ Code, p. 5 (www.gov.uk/government/publications/regulators-code).

different ways as part of different models for quality by the other nations of the UK.⁴¹ Our view is that the confidence of stakeholders rests in the quality of UK higher education as a product, whether it is delivered in the UK or outside the UK, coupled with confidence that higher education is well-regulated across the UK by each of the UK nations.⁴²

217. Moreover, we consider that our proposals sit squarely within a broader UK-wide approach to quality and standards in which the UK Quality Code and the other reference points of the 'academic infrastructure' play only a part in each of the nations of the UK. Our phase two proposals continue to make use of sector recognised standards that are also used as reference points by the other nations, and thereby maintain a UK-wide approach to academic standards.⁴³ Our proposed outcomes-focused quality conditions continue to provide assurance that English providers are meeting key defining characteristics of UK-wide higher education at least at baseline. These include high quality delivery (whether that teaching takes innovative or more traditional forms), an academic experience supported by high quality learning resources (including use of learning technology) and reflecting up-to-date knowledge and research. We intend to propose that TEF will continue to operate as a UK-wide framework and this will ensure a consistency in approach above the baseline.
218. We recognise that the OfS is a new regulator, and it is inevitable that the changes in the way higher education in England is now regulated may be unfamiliar to international stakeholders. We are therefore initiating a strand of work to support stakeholders inside and outside the UK to understand our approach to the regulation of quality and standards and how this fits within a UK-wide model. We will work with sector bodies, UK government, the funder regulators of the devolved administrations, and overseas stakeholders to ensure our approach is understood and that areas of common approach across the UK are clear to those stakeholders.
219. We consider that the arrangements for regulation put in place by the regulatory framework and developed further through the proposals we now present will strengthen national and international stakeholder confidence in English higher education. They will ensure that we can enforce a baseline of quality and standards across higher education courses offered by providers regulated by the OfS regardless of where in the world and how the courses are

⁴¹ The expectations only of the UK Quality Code are a baseline quality requirement in Wales (see the Quality Assessment Framework for Wales (April 2020), paragraph 12 (www.hefcw.ac.uk/wp-content/uploads/2020/08/QAF-April-2020-English.pdf)). In Scotland the Quality Code one of a number of mandatory reference points that providers are expected to address in Enhancement-Led Institutional Review (see the Handbook for ELIR (April 2017), para 8 (www.qaa.ac.uk/scotland/en/reviewing-higher-education-in-scotland/enhancement-led-institutional-review/handbook-and-guidance)). In Northern Ireland elements of the UK Quality Code are included in baseline regulatory requirements (see the Department for the Economy in Northern Ireland Revised Operating Model for Quality Assessment (March 2016), para 12 (www.economy-ni.gov.uk/sites/default/files/publications/economy/Revised-Operating-Model-Quality-Assessment.pdf)).

⁴² See 'Study UK' on the British Council website (study-uk.britishcouncil.org/why-study/higher-standard-education).

⁴³ Framework of Higher Education Qualifications (FHEQ) is part of baseline quality requirements in Wales (see the Quality Assessment Framework for Wales (April 2020), paragraph 5 (hefcw.ac.uk/wp-content/uploads/2020/08/QAF-April-2020-English.pdf)), in Northern Ireland (see the Department for the Economy in Northern Ireland Revised Operating Model for Quality Assessment (March 2016) paragraph 43 (www.economy-ni.gov.uk/sites/default/files/publications/economy/Revised-Operating-Model-Quality-Assessment.pdf)) and in Scotland within the Scottish Credit and Qualifications Framework (SCQF) (scqf.org.uk).

delivered. We consider that this should be located within a broader UK argument that: (1) the quality of higher education within the UK is guaranteed by rigorous regulatory arrangements determined by each of the four nations of the UK; and (2) each of the nations of the UK makes appropriate use of the same or similar reference points in order to maintain, under their different regulatory and legislative approaches, the world-leading quality and standards of UK higher education.

220. In developing our detailed proposals for revisions to the regulatory framework and external engagement, we have had regard for the first principle in the Regulators' Code to carry out our activities in a way that supports those we regulate to comply and grow. As discussed in more detail in paragraphs 294-306, we consider that our proposed approach is proportionate and represents a necessary regulatory burden.
221. We have specifically considered points concerning compliance with the ESG. The ESG are a set of standards and guidelines for internal and external quality assurance in higher education adopted by the Ministers responsible for higher education of participating countries in May 2015.⁴⁴ The ESG are designed to be applied to all higher education, regardless of place or mode of delivery. The standards set out the agreed and accepted practice, while the guidelines describe how the standards might be implemented, however this will vary depending on the provider, regulator or national context, as appropriate. The three parts of the ESG relate to internal quality assurance (quality assurance within providers), external quality assurance (broader quality assurance) and quality assurance agencies. None of these three parts refer either specifically to the UK Quality Code, or more generally to a requirement for a single set of reference points to be applied to all providers within the UK. Part 2.5 ('criteria for outcomes') states that any outcomes or judgements made as the result of external quality assurance should be based on explicit and published criteria that are applied consistently, irrespective of whether the process leads to a formal decision.
222. We consider that the OfS's regulatory requirements expressed in the proposed revised B conditions set out in our phase two consultation would meet this expectation. We do not therefore consider that the removal of references to the UK Quality Code from the regulatory framework would have any implications for judgements about whether the arrangements in England may be consistent with the ESG.
223. We have also considered the points made that the proposals would create challenges for providers with partnership arrangements operating across the UK's borders because of the operation of different arrangements for the oversight of quality and standards in the different nations of the UK. We do not consider it is possible to entirely remove the overhead of dual regulation for providers operating in this way, as higher education policy is devolved to the nations of the UK.
224. With reference to our general duties, our assessment is that our proposals are proportionate in this context. First, the flexibility in our principles-based approach gives providers scope to minimise the overheads incurred in meeting the requirements of two regulators. Second, our proposed approach to regulation is inherently risk-based, with attention focused on those

⁴⁴ See www.enqa.eu/esg-standards-and-guidelines-for-quality-assurance-in-the-european-higher-education-area/.

issues and providers that represent the greatest risk to students.⁴⁵ Third, as already discussed in this section, our proposals sit within a broader UK-wide approach making alignment of our requirements and those of the other UK nations more straightforward. Finally, with reference to dual regulation, as we noted above with reference to TNE courses, our intervention factors also require us to consider whether any action is being taken by another regulator to remedy an increased risk or a breach. An intervention is more likely to be used where an increased risk or a breach is not being remedied by another regulator's actions. This requires us to act proportionately when other regulators also have an interest in the same provider.⁴⁶

225. Some respondents noted that some material contained in the UK Quality Code relating to complaints and appeals was not included in our proposed definitions of quality. We have not proposed including this material because it is covered elsewhere in the regulatory framework, through condition C1 (guidance on consumer protection law). This condition provides that a 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. This includes the arrangements that a provider has put in place to 'ensure that complaint handling practices are clear, accessible and fair'.⁴⁷ Our view is that including these elements by retaining the reference to the UK Quality Code creates a risk of duplication in our regulatory activities and would represent an unnecessary regulatory burden.

226. We have also considered the points made by students' union respondents to the consultation that our proposals place less emphasis on student engagement than is the case in the UK Quality Code. The OfS recognises the importance of student engagement and is giving careful consideration to how it should support it through its approach to regulation. We propose to maintain in our revised conditions of registration a prominent requirement for providers to ensure that they are effectively engaged with students to ensure they receive a high-quality academic experience and are succeeding in and beyond higher education.⁴⁸ Student engagement also continues to be considered in the public interest governance principles that underpin conditions E1 and E2. Further, student engagement has also until now been an important consideration in the TEF, which incentivises and recognises excellence above the regulatory baseline. Our consultation this autumn on the future TEF will include proposals for how student engagement should feature within it, and for students to be able to make an independent submission to inform TEF assessments.

227. With reference to the question of whether statutory responsibility lies with the DQB for setting standards in England, section 5 of HERA gives the OfS the power to impose conditions of registration on providers seeking registration and those already registered. Section 13 states

⁴⁵ Consultation on regulating quality and standards in higher education (November 2020), paragraph 105: www.officeforstudents.org.uk/publications/consultation-on-regulating-quality-and-standards-in-higher-education/.

⁴⁶ Regulatory framework paragraph 167(m): www.officeforstudents.org.uk/advice-and-guidance/regulation/the-regulatory-framework-for-higher-education-in-england/.

⁴⁷ Regulatory framework paragraph 365(c): www.officeforstudents.org.uk/advice-and-guidance/regulation/the-regulatory-framework-for-higher-education-in-england/.

⁴⁸ See consultation document, proposals for condition B2.2(b). Our detailed response to comments on student engagement is set out above in this document, in paragraphs 96 and 97.

that these conditions may include a condition relating to the quality of, or the standards applied to, the higher education provided by the provider (including requiring the quality to be of a particular level or particular standards to be applied). These powers to impose regulatory requirements for standards sit therefore with the OfS and not with the DQB, or any other body.

Providers seeking registration

228. The phase one consultation proposed that the OfS would continue to impose conditions that relate to quality and standards as initial conditions of registration for providers seeking registration with the OfS. However, we proposed that we would express some of the initial requirements for current conditions B1, B2, B4 and B5 differently from the equivalent ongoing requirement. This proposal was to ensure that our regulatory approach appropriately reflects the context for a provider that may not yet have delivered higher education but is able to present credible plans to demonstrate that it will do so, if registered.
229. The phase one consultation also proposed that the OfS would continue to impose an initial condition that relates to student outcomes (currently condition B3) for any provider with sufficient data to construct indicators and we would expect this to be expressed in the same way as for the equivalent ongoing condition. We proposed that we would consider that a provider does not have sufficient data to construct indicators if it has not previously submitted data returns to the designated data body (or equivalent) that would give rise to the calculation of at least one data point for at least one of the student outcome measures examined in the assessment of the condition. In such cases, it would normally be the position that the relevant initial condition would be disapplied for the purpose of registration. A number of comments were made about this element of the phase one proposals. These comments and responses are being considered as part of the development of our more detailed consultation on regulating student outcomes due for publication in the autumn. We have therefore not responded to these points in this document because they are not relevant to our phase two proposals.
230. Several respondents expressed agreement with the proposal to express the initial requirements for current conditions B1, B2, B4 and B5 differently from the equivalent ongoing requirement. The proposal was considered necessary and fair to new providers, removing unnecessary barriers and supporting market entry and choice for students.
231. While in general agreement with the proposed approach, some respondents raised points they suggested the OfS should consider. The main points raised were:
- a. Providers that have been registered on the basis of plans should be subject to a probationary registration period and additional monitoring in a similar approach to that used for New Degree Awarding Powers.⁴⁹ This approach would support both a provider's understanding of future requirements to meet the conditions and increase confidence in the sector more generally.

⁴⁹ See Regulatory Framework for process for Degree Awarding Powers: www.officeforstudents.org.uk/publications/securing-student-success-regulatory-framework-for-higher-education-in-england/.

- b. Further detail should be provided, and further consultation conducted on how the OfS will judge the credibility of plans, and also the role that the DQB may have in assessing new providers.
 - c. OfS should consider how it, or the designated data body, might contribute to the specific training and other support needs of new providers preparing to submit statutory data returns for the first time to support best practice.
 - d. Providers that are re-entering higher education under a different trading name or title should be assessed in the same way as those with a track record of higher education.
232. Some respondents suggested plans are not an adequate substitute for a track record of achievement and a new provider should not be registered with the OfS until it has an established track record of performance and has demonstrated it is both viable and sustainable.
233. A small number of respondents said that all new providers should be required to work in partnership with a more established provider for a set period until a track record was established and sufficient evidence was available to be able to meet all requirements for registration. It was suggested this would reduce the potential risk for students and new providers would benefit from the support of an established provider.
234. Other respondents suggested that the requirements for new providers should not be less demanding than for existing providers. A high threshold for market entry should be maintained otherwise the approach would not be sufficiently robust to ensure students' interests are protected and the international reputation of English higher education may be undermined.
235. A further suggestion was that new providers' entry to the market should be restricted to specified subject areas, levels of study or capped numbers of students until a provider is able to demonstrate a track record of delivery to reduce risk to potential students and protect their interests.
236. Some respondents took the view that new providers should be subject to detailed scrutiny by the DQB across all aspects of quality and standards. While others suggested that external professional bodies should be responsible for assessing plans from new providers as they are reviewing quality for existing providers.

Our response

237. The regulatory framework sets out our intention to remove unnecessary barriers to entry for high quality providers, increasing diversity and competition in the sector for the benefit of students. Our proposal was designed to support this approach by expressing the initial conditions differently to be clear that judgements about compliance could be based on a provider's plans. However, these plans would need to demonstrate that the provider, if registered, would comply with ongoing conditions for quality and standards from the date of registration. In our phase two consultation we are not proposing to lower the requirements for quality and standards for new entrants – only to express the evidence required to demonstrate compliance differently. The detail of these proposals and how plans will be assessed is set out in paragraphs 74-90 of our phase two consultation.

238. We have considered the suggestion that new providers without a track record could be subject to a probationary period and to more intensive monitoring. Within our risk-based system of regulation, providers that are judged to be at increased risk of breach of a condition may already be subject to more frequent and intensive monitoring, including through the imposition of specific conditions of registration.
239. The DQB currently conducts a quality and standards review (QSR) for a new provider to provide evidence that conditions B1, B2, B4 and B5 are satisfied. As part of the review conducted before registration, the DQB provides a confidence judgement which relates to the confidence that reviewers have that a provider will continue to meet requirements on an ongoing basis. This informs our risk judgement and any regulatory intervention, including additional requirements, that might apply. Our phase two proposals set out that a review by the DQB for the purposes of registration will remain a requirement in most circumstances.
240. Based on responses to the consultation about more frequent monitoring and assessment by the DQB, we considered one option would be to require all new providers to undergo a follow-up DQB review after 12-18 months of operation to re-test the provider on the evidence of its delivery of higher education against its plans. This would be similar to the requirements set out in the regulatory framework for the probationary period that applies when providers are awarded New DAPs.
241. However, we consider that it is more proportionate to continue to base our regulatory approach in relation to conditions B1, B2, B4 and B5 on an assessment of the risk posed by the provider, rather than operating a blanket approach in which all new providers would be subject to a further review, more intensive ongoing monitoring or reporting.
242. We consider that continuing to base our decisions on the regulatory risk posed by a provider is consistent with HERA. It also gives weight to our general duty under section 2(1)(a) of HERA for competition and choice, in that we are not placing unnecessary barriers to entry for high quality providers, and section 2(1)(g) proportionality – we consider that a blanket approach (whereby all new providers are automatically subject to further reviews) would not properly assess the regulatory risk posed by the provider and target regulatory action where it is needed. It would also be disproportionate to require further reviews or additional monitoring where there was no evidence of an increased regulatory risk. We consider our approach also gives weight to our general duty under section 2(1)(a) of HERA for competition and choice, in that we are not placing unnecessary barriers to entry for high quality providers. We are therefore not progressing this suggested approach.
243. The same considerations apply to the suggestion that new providers should be required to work in partnership with a more established provider for a set period of time, that subject areas should be restricted, and student numbers capped for new providers.
244. One of the aims of the regulatory framework was to allow high quality, innovative providers to access benefits from registration without a validating body. We consider that to require providers to deliver validated or sub-contractual provision before being eligible to apply for registration, or in their first years of registration, would risk stifling the market if new providers were unable to find a partner. Some new providers have reported that, particularly when delivering innovative or new provision, validation can be difficult to achieve. We therefore want to retain routes into higher education for providers that can demonstrate that they have

credible plans to deliver high quality higher education and which are subject to review by the OfS.

245. As set out above, our regulatory interventions are based on the risk of a provider breaching its conditions relating to quality and standards. We do not consider that all new providers are automatically at increased risk of breaching these conditions, and therefore consider an approach that restricted new entrants to the market to specified subjects, levels of study or that capped student numbers would be disproportionate to the risk posed. We will continue to monitor and evaluate the effectiveness of our registration requirements for new providers, however we have no evidence from the current system that new providers present, in general terms, more risk than established providers. Instead, our experience of assessing new providers is that some have very experienced academic staff and leadership which means that although the provider itself has no track record, individuals involved in establishing the provider do.
246. In deciding to take action that might restrict a provider's activity we would have regard for our general duties, including our general duty to be proportionate (HERA section 2(1)(g)(i)) and our intervention factors. HERA and the regulatory framework therefore already set out a risk-based approach that enables additional requirements to be placed on providers on a case-by-case basis at the point of registration. We consider this approach to be sufficient and we are not proposing to develop an approach that would universally restrict the activities of all newly registered providers in our more detailed proposals. In reaching this position we have had regard in particular to our general duties to promote quality (HERA section (2)(1)(b)) and also to target our regulatory activities only at cases where action is needed (HERA section (2)(1)(g)(ii)).
247. Requiring partnership of the type suggested does not, in our view take account of the risk posed by the provider. We have decided not to include this suggestion in our more detailed proposals after having regard to the general duties under section 2 of HERA, specifically proportionality, competition and institutional autonomy.
248. On the points about training on data requirements, we are aware that HESA already provides a variety of live, web-based and bespoke training opportunities to support providers in responding to its statutory data requirements. In addition to introductory sessions included within the onboarding of new subscribers, a number of HESA's online short courses are directly targeted at staff in providers who are new to the data returns, covering key concepts behind the record as well as the entities and key data items, and the steps involved in validating and submitting the data. We also provide a help and support line for each data collection submitted directly to us, and provide webinars where we identify a need to do so (for example, to support the return of higher education students through the ESFA's individualised learner record). We welcome any further suggestions outside this consultation about where we or the designated data body could give further consideration to training to support providers in meeting the requirements of data returns.
249. In relation to the point that providers re-entering higher education under a different trading name or title should be assessed in the same way as those with a track record of higher education, we agree with this as it is important that providers cannot seek to avoid an assessment of poor performance through rebranding. Similarly, if a registered provider is acquired or merges with another provider, even if this establishes a new legal entity, the

track record of the provider would be considered with any new application to register. Further details on these points are set out in our phase two consultation on the proposed new conditions and associated guidance.

250. We have considered the suggestion that a more rules-based approach should be used for new providers and where evidence is missing the OfS should map out how each ongoing requirement might be demonstrated. Such an approach would have potential benefits – it is likely to be easier for new providers to understand requirements and demonstrate how they are met now or will be met in the future. However, we consider that a rules-based approach would stifle innovation because providers are implicitly or explicitly pushed to comply with those rules and so prevented from delivering new approaches. We have therefore not included this approach within the next stage of our consultation because we consider that our principles-based approach to regulation of quality is more appropriate for a diverse sector.
251. Some respondents commented that new providers should be subject to detailed scrutiny by the DQB across all aspects of quality and standards. Every new provider is currently subject to a review by the DQB before registration in relation to conditions B1, B2, B4 and B5. This requirement is included in our phase two proposals.
252. In relation to views that external professional bodies should be responsible for assessing plans from new providers as they are reviewing quality for existing providers, we note that not all new providers would be aiming to deliver courses that had the involvement of a PSRB because the level of involvement of PSRBs with higher education varies by subject type across the sector. We also consider that this would add increased burden and complexity to the regulatory system because the approaches to quality and standards of PSRBs differ considerably across the higher education landscape. Also, joint activities of the OfS and PSRBs would require care because each needs to ensure that it can properly and lawfully continue to discharge its own functions.

The role of the designated quality body

253. Our phase one consultation included proposals about how we may ask the DQB, or another appropriate body, to gather evidence relevant to the B conditions that relate to quality and are expressed as qualitative baselines (currently conditions B1, B2 and some aspects of B4).
254. This section covers points made by respondents regarding the principles of the proposed approach, specifically relating to the role of the DQB as it is set out in HERA and the regulatory framework. We will publish separately, at a later time, our responses regarding points made relating to the following associated matters:
- the details of the form that the gathering of further evidence should take
 - our view that we would, as now, not involve the DQB in the assessment of a condition relating to student outcomes (currently condition B3).
255. The view was presented by several respondents that the DQB was suitable to conduct investigation of quality and standards. There was also support from a number of respondents for the idea that investigations by the DQB should be targeted at issues of concern, rather than involving a wider review.

256. Respondents (who commented on the proposal to commission a body other than the DQB to investigate quality) were not in favour of this suggestion, arguing that the DQB should be the default investigatory body given its expertise and standing in the sector. There was also comment that involving other investigatory bodies would be unnecessary because providers pay subscription fees to the DQB.
257. Various respondents made the point that the role of the DQB in the proposed approach is ambiguous due to the proposal to remove the reference to the UK Quality Code. It was suggested that this would create uncertainty about the criteria against which the DQB would assess quality and standards.
258. Several respondents asked whether the OfS has powers within HERA to set and assess quality and standards independently of the QAA, given the QAA is the DQB, and whether HERA permits bodies other than the OfS or the DQB to conduct assessments of quality and standards.
259. Several respondents also sought more information about the process the OfS would use when commissioning investigation by the DQB and the nature of an investigatory visit. Further information was requested on:
- a. The proposed separation of standards where there was a requirement to consult with the DQB, and quality, where there was not.
 - b. The proposed relationship between the OfS and the DQB, and the DQB's role in relation to intervention by the OfS.
 - c. How the OfS intended to strike a balance between regulatory requirements and the internal and external quality assurance mechanisms employed by providers, and the role that the DQB was expected to play in this.
260. It was also suggested by some respondents that the OfS should commission five-yearly independent reviews of providers by the QAA, alongside the proposed risk-based approach to monitoring and intervention. It was suggested that these reviews should be targeted on areas of concern and seek to improve performance above a minimum baseline, rather than primarily as a means of encouraging compliance.

Our response

261. HERA sets out in broad terms the arrangements that must be put in place for the assessment of conditions of registration relating to quality and standards. Section 23 of HERA sets out that the OfS 'may assess or make arrangements for the assessment of, the quality of, and the standards applied to, higher education provided by English higher education providers.' Further, section 23 states that the OfS 'must assess, or make arrangements for the assessment of, the quality of, and the standards applied to, higher education provided by—
- (a) institutions who have applied to be registered in the register for the purposes of determining whether they satisfy any initial registration condition applicable to them relating to the quality of, or the standards applied to, higher education provided by them (see section 13(1)(a)), and

(b) registered higher education providers for the purposes of determining whether they satisfy any ongoing registration condition of theirs relating to the quality of, or the standards applied to, higher education provided by them (see section 13(1)(a)).’

262. Section 27 sets out that, where a DQB is in place in accordance with Schedule 4 of HERA to conduct the assessments set out in section 23, the OfS’s functions to assess the standards applied to higher education of a provider, cease to be exercisable by the OfS. The QAA is currently the DQB.
263. The provisions in HERA mean that, for conditions relating to quality, the OfS may assess matters relating to compliance with those conditions, ask the DQB to assess those matters for it, or ask another body to assess those matters for it. But, because a body has been designated by the Secretary of State, for matters relating to standards, the OfS must ask the DQB to make any assessment. It is our view that HERA sets out the lawful basis on which the OfS or bodies other than the DQB can make assessments of quality relating to conditions of registration. Ultimately however, regardless of which body makes an assessment of quality or standards under section 23 of HERA, all decisions relating to compliance with conditions of registration about quality or standards rest solely with the OfS.
264. In relation to the suggestion that we should ask the DQB to undertake five-yearly reviews, the regulatory framework is clear that we will not systematically reassess the compliance of each provider with each of its conditions of registration on a scheduled cyclical basis. This would include any cyclical review activity relating to quality and standards by the DQB. The role of the DQB or other bodies is to conduct assessments on the basis set out in section 23 of HERA as part of a risk-based approach to regulation alone, rather than making use of a cyclical approach. This is the basis on which quality and standards reviews have previously been undertaken by the DQB.
265. With reference to requests for further explanation regarding how or when the OfS might in practice either make an assessment of quality itself, or ask a body other than the DQB to do this, further details are set out in paragraphs 91-102 in our phase two consultation.
266. The status of any assessment activity undertaken by the DQB would not change under our proposals to remove references to the UK Quality Code from the regulatory framework. When the QAA acts as the DQB in England, it is providing assessments that support the OfS in its decision-making about compliance with conditions of registration relating to quality and standards, in accordance with HERA. There is no requirement that the QAA’s role in undertaking this work as DQB is linked to the UK Quality Code.
267. At present, the examples of behaviours currently set out in the regulatory framework make reference to the UK Quality Code and are used as the basis for the judgements reached by the DQB in quality and standards reviews. However, these current references to the UK Quality Code do not need to be retained in order for the QAA to fulfil its role as the DQB and enable the OfS to reach decisions about a provider’s compliance with conditions of registration for quality and standards.
268. As noted, some respondents queried how a balance would be struck between regulatory requirements and the internal quality assurance mechanisms employed by providers and the role of the DQB. As a predominantly principles-based and outcomes-based regulator the OfS

does not set rules or detailed requirements for how a provider organises its quality assurance arrangements. Instead, it allows providers to consider how they wish to demonstrate that they meet conditions of registration relating to quality and standards.

269. We consider that this approach gives providers flexibility to innovate. While there is a perception among respondents that this will increase the regulatory burden, as we have already explained, our view is that the approach in fact enables providers to avoid expending resources in the implementation of a prescribed and generic approach to quality assurance. In the framework established by HERA and the regulatory framework, the function of the DQB is to assess providers to assist the OfS in determining whether, within our regulatory model, the conditions of registration are satisfied. It is for a provider to determine how to set up its quality assurance arrangements to support its compliance with conditions of registration, and not for the OfS or the DQB to tell it how to do so.
270. On the point that involving other investigatory bodies would be unnecessary because providers pay fees to the DQB, we would consider a range of factors in deciding to involve another organisation and our focus would be on sourcing the advice we need to illuminate the particular regulatory concern we had identified. It is the case that providers are required to pay fees to the DQB but the mechanisms for this are linked to levels of activity. (This DQB fee is not to be confused with any separate annual fee a provider may choose to pay to the QAA as a voluntary membership organisation). The annual DQB fee covers only the DQB's infrastructure costs to support reviews of quality and standards, as well as DAPs. There is an additional fee associated with any review activity commissioned, payable by the provider concerned.
271. However, the level of DQB fees is not arbitrary but determined by the volume of DQB assessment activity. In the event that the volume of DQB activity were to change, such that the infrastructure needed by the DQB changed, that would be taken into account when the DQB sets its annual fee.

Equality considerations

272. Respondents were asked to comment on the potential impact of the proposals on individuals based on their protected characteristics.
273. Some respondents expressed the view that, based on the current proposals it was difficult to identify what the potential consequences would be for individuals based on their protected characteristics.
274. However, a range of respondents made the suggestion that the OfS should conduct an Equality Impact Assessment ('EIA') of its proposals, as has been done previously when significant changes to the regulatory approach have been made, for example when the regulatory framework was first introduced.
275. Some respondents suggested the proposals could have the following consequences which should be assessed through an EIA:
- a. Decreased access to higher education for students from historically low participation groups, which could not be mitigated at individual provider-level. There were suggestions that the proposals would lead providers to reduce provision and

disincentivise the recruitment of students from disadvantaged backgrounds. One respondent referred to there being evidence that providers were already adjusting curricula and targeting courses to avoid high-risk areas of recruitment.

- b. Changes to providers' admissions behaviour, with reduced tolerance for admissions that could negatively affect a provider's position against baselines.
- c. Enabling providers that have previously been insufficiently ambitious in widening participation to justify an ongoing lack of progress based on the low likelihood of successful outcomes, although Access and Participation monitoring may mitigate against this.

276. Respondents also identified some equality-related issues as unintended consequences of the OfS's proposals:

- a. Restricted geographical mobility was often cited as an unintended consequence for underrepresented groups, particularly in relation to the impact of the proposals on students with disabilities. Respondents took the view that these students would be particularly affected by a reduction in choice of courses due to a more limited ability to travel, if suitable courses became unavailable locally as a result of the proposals causing providers to become more risk averse in recruiting from such groups. Respondents also made similar points about students with family and caring responsibilities.
- b. A few respondents suggested that the OfS's proposed approach reflected bias against students from widening participation backgrounds by implicitly favouring students from other backgrounds.
- c. One respondent criticised the absence of 'value added' or 'real progress' in the proposed definitions of quality and standards and suggested this would further disadvantage students from particular backgrounds by concealing the problem of deeply rooted social challenges. It was also suggested the proposals could compound disadvantage resulting from the pandemic.
- d. One respondent commented that the proposal to not apply some of the B conditions of registration for providers deemed at low-risk would reduce the number and diversity of students in higher education. They judged that providers would become more risk-averse in making offers to disadvantaged students, in particular those on an alternative route to a traditional three-year degree, such as apprentices, part-time and mature students, and those on foundation degrees.

OfS response

277. HERA sets out that, in performing its functions, the OfS must have regard to its general duty to promote equality of opportunity in connection with access to and participation in higher education provided by English higher education providers (HERA section 2(1)(e)). In the current proposals this must also be seen in combination with our general duty to have regard for the need to promote quality, and greater choice and opportunities for students, in the provision of higher education by English higher education providers (HERA section 2(1)(b)). The OfS also must have regard for the Public Sector Equality Duty in the Equality Act 2010.

This requires the OfS to have due regard to the need to eliminate unlawful discrimination, foster good relations between different groups and advance equality of opportunity. This means we have regard for these duties in developing our policies and in making any decision or intervention in relation to a provider. Related to this, we have had regard to our published equality and diversity objectives and action plan, in particular objectives 1, 3, 4 and 5 in the development of our proposals.⁵⁰

278. We have noted the points made about the potential impact of our proposals on low participation groups, on providers that particularly work with those groups, or that it would be a disincentive for other providers to work more with those groups. Annex F of the phase two consultation document sets out how these points have been considered in the development of our phase two proposals.
279. Overall we consider that the approach we proposed in our phase one consultation is fully aligned with our approach to access and participation delivered through access and participation plans and condition A1. Access and participation plans must set out the actions being taken by a provider to reduce gaps between different student groups with reference to access, progression and success. Our phase one proposals would provide a further safeguard, in the form of a minimum baseline for quality and standards that would apply to all students. As we have set out above in greater detail, our view is that regulating minimum requirements for quality and standards is a safeguard for both quality and equality because it ensures that all student groups (including those with protected characteristics) do not receive an education where the quality or standards are below a minimum acceptable level.
280. Our view is also that the concepts of ‘value-added’ or ‘real progress’ for underrepresented student groups (cited by one respondent) fall within the sphere of our approach to access and participation, with its focus on the closure of gaps in progression and success between different student groups. This works in tandem with our approach to securing the baselines for quality and standards for all student groups.
281. A number of respondents asked why we had not produced an EIA for the phase one consultation. This is because we keep under review how we embed our equality duties into our policy development and policy implementation to ensure compliance with the PSED. We have engaged with equality considerations throughout our policy development and decision-making process. We consider points raised by respondents, for example as set out in this equality section of our response, and also as they arise in the context of responses covering other aspects of our phase one proposals. The OfS has had proper regard to matters within the scope of the PSED and other relevant duties in developing its policy approach and deciding to proceed with further consultation. We note that there is no legal requirement to conduct an equality impact assessment. We will continue to have proper regard to the PSED and other relevant duties in the next stage of the consultation process.
282. In response to the point that some conditions would be disapplied for some providers, while our proposals set out a risk-based approach to regulation, we would like to clarify that under our proposals we envisage that all conditions would continue to apply to all providers to address relevant regulatory risks in protecting the interests of students.

⁵⁰ See www.officeforstudents.org.uk/about/equality-and-diversity/objectives-for-student-equality/.

Regulatory burden

283. Many respondents welcomed our intention to reduce burden. Several, however, commented that burden is unavoidable in ensuring a properly functioning regulatory system and that current levels of burden are appropriate to maintain quality and standards.
284. Where respondents welcomed the intention to reduce burden, several wanted more information about how the proposals, if implemented, would deliver this in practice. Respondents considered more information to be necessary to judge likely burden in practice, particularly in relation to the regulation of partnership arrangements.
285. A large number of respondents thought the proposals would add to existing regulatory burden. Some suggested dedicating time to ensuring they satisfied regulatory requirements would reduce time dedicated to enhancing delivery of courses to students. Some saw increased burden as an unintended consequence of the proposals.
286. Some respondents thought that while the proposals should lead to a reduction in burden over time, some initial additional burden would be necessary to implement the proposed changes. However, they asked whether the proposed changes would be in place for long enough to achieve the anticipated reduction of burden, given their perception of the regularity of changes in political direction and priorities.

Responses about sources of burden in the proposals

287. Some respondents suggested that the proposals would increase burden because they understood that the proposals would cover a wider range of students and courses, including TNE and higher education not funded by the OfS. Respondents also commented on the cumulative additional burden of the proposals in relation to access and participation and the TEF, suggesting there could be duplication between these regulatory activities.
288. Some respondents suggested that the proposed changes would generate considerable additional burden for providers because they would have to remodel their internal governance and quality assurance systems that had been established following the introduction of HERA and the regulatory framework.

Responses about the additional burden for specific types of provider

289. Some respondents suggested that any additional burden from the proposals would disproportionately affect some types of provider, such as small providers that have fewer staff, pathway providers, further education colleges that deliver higher education, providers with the least resources or providers that operate outside of the UK or across all four nations.
290. It was variously suggested that the proposed approach would require additional reporting, and may lead to duplication between internal and external regulation which is not justified within a cost-effective and effectual regulatory system. It was suggested that the additional burden could be disproportionate where providers must also satisfy requirements of awarding bodies, PSRBs or Ofsted (in the case of apprenticeships).

Responses about how to reduce burden in the proposed approach

291. Several respondents made suggestions about how to reduce burden if the OfS decides to move forward with the proposals. These included suggestions that the proposed changes

should be piloted to assess their impact and the OfS should hold guidance and training events, particularly for providers who were newer to the sector.

292. Some respondents also said that the OfS should collaborate with other bodies engaged in quality and standards activity, such as the DQB, DDB, EFSA, PSRBs and authorities in the devolved nations, to ensure a comprehensive approach and to ensure that duplication is avoided. It was suggested that information sharing with other regulatory bodies would reduce the burden generated for providers, such as through unnecessary duplication, both within the proposals and generally.

Suggestions about how the OfS might reduce burden more generally

293. Several respondents made suggestions about how the OfS could reduce regulatory burden in general. Suggestions included holding sector briefing sessions, having transition periods for new requirements, and encouraging providers to query regulatory requirements or make it clear if they only apply to some types of providers. It was also suggested that the OfS could share data it holds with providers to help reduce burden and consider where regulatory requirements can be rooted in providers' standard operations. It was also requested that the OfS assess at all stages of the proposals the burden that would be generated for providers by having to implement changes against the anticipated benefit of reduced burden.

Our response

294. We recognise that all regulation necessarily imposes some regulatory burden on regulated organisations and that any changes to regulation may, as some respondents noted, result in some initial increase in burden as providers seek to understand and comply with new requirements. We monitor the overall regulatory burden on providers and aim to minimise that burden. We took a number of steps in autumn 2020 to reduce the burden on providers, including actions relating to data futures, random sampling and the National Student Survey. We have subsequently introduced an experimental key performance measure (KPM 26) to monitor various aspects of regulatory burden, including data submission to us by providers and the number, word count and readability of OfS regulatory documents. We separately consider 'substantive burdens' (costs incurred by providers delivering core activities to meet OfS conditions of registration) when we consider the introduction of policy changes, such as those set out in our phase two consultation. We will continue to consider closely the regulatory burden we impose on all types of provider.
295. Comments that the proposals would increase regulatory burden did not provide detailed explanation about the specific ways respondents thought burden would be increased. It is our view that greater clarity about our regulatory requirements and the increasingly risk-based approach we proposed in the phase one consultation, reduces the burden for providers that do not pose specific increased risk of breaching conditions.
296. We consider that the flexibility our approach affords providers (in how they develop their courses and organise their internal processes and governance) enables them to align their internal quality arrangements with our regulatory requirements in ways that are efficient and effective. The approach to intervention set out in our phase one proposals expressly aligned increased regulatory burden for a provider with increased regulatory risk. We see this distribution of higher regulatory burden on some providers (i.e. those judged to be at increased regulatory risk) as necessary to protect the interests of students studying at

providers with performance below, or at risk of falling below, the baseline for quality and standards set out in the phase two consultation. It will also mean that providers not considered to be at increased regulatory risk will experience reduced burden compared with those that are.

297. We have consulted separately on our approach to reportable events, with proposals to increase clarity about reporting requirements and provide scope for a more risk-based approach to imposing requirements with the intention that those providers that do not represent increased risk would be subject to less extensive requirements. The outcome of that consultation will be published later in 2021.
298. We have also committed to reducing duplication of regulation for those providers that are also regulated by the ESFA.⁵¹
299. In relation to the suggestion that there will be increased regulatory burden as a result of the inclusion of all students and all courses within the scope of our regulation of quality and standards, our proposals clarify that there is a potential regulatory burden borne by each registered provider due to the possibility of engagement with the OfS relating to concerns about all types of course covered by our proposals. In the case of most types of course, this burden would already have been transparent to providers. Overall, however, we consider the regulatory burden associated with our regulation of all types of higher education covered by these proposals to be proportionate in enabling us to deliver a consistent approach to the minimum requirements for quality and standards in the interests of students.

Impact of proposals on particular providers

300. Although other factors, including the complexity of their courses, play a part, we recognise that the regulatory burden can in some ways be greater on small providers due to their smaller staff numbers. We do consider, however, that the potential for flexibility within our proposed approach can provide small providers, pathway providers and further education colleges with opportunities to adopt solutions for the delivery of courses that are right for their size and complexity. Because we do not mandate that a particular approach should be adopted, each provider is able to adopt an approach that will meet our requirements that best fits its size and context. We do not consider it to be in the interests of students to set different requirements for quality and standards for different types of provider. However, we plan to undertake a project to consider whether the way we implement our regulatory approach has a particular impact on small providers.

The cumulative burden across access and participation, quality and standards conditions, and the TEF

301. We aim to deliver an approach that minimises regulatory burden for providers across related areas of activity such as access and participation, quality and standards conditions and the TEF. We will continue to have regard to our general duties relevant to cumulative burden, including that our regulatory activities should be proportionate (HERA section 2 (1) (g) (i) and to the provision in the Regulator's Code to carry out our activities in a way that supports those we regulate to comply and grow (provision 1) as we set out our detailed proposals in each of these areas: our phase two consultation and our further consultations on regulating

⁵¹ See www.officeforstudents.org.uk/news-blog-and-events/blog/balancing-act-measuring-our-progress-on-minimising-regulatory-burden/.

student outcomes and on the TEF.⁵² Where possible, we will seek to reduce regulatory burden through the alignment of these areas of activity and the avoidance of duplication.

Reducing the burden of dual regulation working with professional, statutory, regulatory bodies or other similar bodies in England

302. As we have already set out in paragraphs 294-299, we consider that the approach to the regulation of baseline quality and standards that we are proposing in the phase two consultation is both proportionate and risk-based. As such, it will align well with the differing approaches of other regulators or other bodies that also have an interest in the same providers or courses.
303. Because of the different functions of different PSRBs or other bodies with an interest in the same providers and courses, it is not a simple task to identify where the needs of different bodies could be met by the same requests from providers. However, the inherent flexibility in our principles-based approach gives providers scope to minimise the overheads incurred in meeting our requirements and maximise the opportunity for them to meet our requirements in an efficient way that aligns with the arrangements they need to meet the expectations of other bodies.
304. The potential burden of multiple sources of regulation is also taken into account through the intervention factors set out in the regulatory framework. These require us to consider, before determining whether to intervene with a provider, any action taken by another regulator to remedy the increased risk or breach, with intervention more likely to be used where an increased risk or a breach is not being addressed by another regulator's actions.

Regulatory burden of operating outside of England (in other parts of the UK or overseas)

305. We have set out a full response on these matters in paragraphs 215 and 223-224. In summary, we consider that the flexibilities in our approach make it more adaptable and lower burden for providers than the adoption by the OfS of a less risk-based or less principles-based approach to regulation as a way of regulating activities in partnership across the other nations of the UK or in TNE.

The proposals should be piloted to assess the regulatory burden on different types of provider

306. Further information about how and when the proposals in our phase two consultation might be implemented are set out in the phase two consultation document, paragraphs 138-140.

Institutional autonomy

307. The importance of institutional autonomy was mentioned by a large number of respondents in relation to a number of different aspects of our proposals, most commonly this related to the proposal to extend the sector recognised standards in the regulatory framework to include the degree classification descriptors. Although there were no specific consultation question or proposals in this area, the consultation document noted the general duty set out in section 2(1)(a) of HERA requiring the OfS to have regard to the need to protect the

⁵² HERA 2 (1) (g) (i) www.legislation.gov.uk/ukpga/2017/29/section/83/enacted and The Regulators' Code, p. 5 (www.gov.uk/government/publications/regulators-code).

institutional autonomy of English higher education providers. Annex G of the phase one consultation explained in more detail how this had been considered.

308. Respondents suggested that the proposals were incompatible with institutional autonomy, or that they would infringe upon it and commented on the importance of considering institutional autonomy when developing more detailed proposals.

Our response

309. HERA sets out that, in performing its functions, the OfS must have regard through the general duties for the need to protect the institutional autonomy of English higher education providers (HERA section 2 (1) (a)). However, our general duties cannot be seen in isolation from each other, and it is necessary for us to balance the way in which we have regard for each of the general duties in how we carry out our functions.
310. In the context of the phase two proposals, the regard we have for our general duty relating to provider autonomy must be balanced in particular with the regard we must have for the need to promote quality, and greater choice and opportunities for students, in the provision of higher education by English higher education providers (HERA section 2 (1) (b)) and also the regard we must have for the need to promote equality of opportunity in connection with access to and participation in higher education provided by English higher education providers (HERA section 2 (1) (e)). Also relevant is our duty to have regard for the principles of best regulatory practice, including the principles that regulatory activities should be proportionate and targeted only at cases in which action is needed (HERA section 2 (1) (g) (i) and (ii)). In recognising the important contribution of provider autonomy to the past and continuing success of the higher education sector in England, we must weigh each of these general duties as we determine how to set out our policies and regulate in the student interest.
311. The consideration we have given to institutional autonomy, particularly in relation to proposed condition B5 is set out in the phase two consultation.

Transparency

312. In the consultation we proposed improving transparency in relation to the indicators used to regulate student outcomes by publishing those indicators for individual providers to show their performance in relation to any numerical baselines we might set. We are considering these responses as we develop our proposals for regulating student outcomes which we will publish in the autumn.
313. There was also a large number of comments on transparency in the OfS's regulation of higher education in general. Some respondents commented that there needs to be transparency in the following aspects of OfS's approach to quality and standards:
- a. A provider's overall risk profile.
 - b. Publication of the OfS's regulatory decisions, including any penalties, sanctions and remedial action required of a provider.

- c. Where the OfS uses its investigatory powers, transparently sharing evidence with a provider, to enable it to make representations. It was suggested that this would lead to timely resolution of any issues about quality and standards.
- d. Published decision-making criteria, including the weight attached to different types of evidence used, in line with the OfS's general duty to have regard to best regulatory practice.

Our response

314. HERA sets out that in performing its functions the OfS must have regard to the principles of best regulatory practice, including the principle that activities should be transparent (section 2(1)(g)).
315. In relation to the comment that the OfS should be transparent about a provider's risk profile – we have taken this to mean we should be transparent with the provider, rather than transparent with the public. When a provider is registered we tell it in writing our view of any conditions where we think there is an increased risk of a breach. Where we make regulatory interventions we also write to the provider and set out our concerns along with the reasoning – where a specific condition is proposed there is a representation process for providers to respond to our assessment and reasoning. In this way we are transparent with providers about our view of regulatory risk.
316. We do not, as a matter of course, alert providers to our view of risk where our judgement is that there is not an increased risk of a breach of a condition of registration. This is because having regard to section 2 of HERA we do not think this would be an effective or efficient use of our resources.
317. On the question of increased transparency about the publication of our regulatory decisions we have recently consulted separately on the publication of information about providers. We will publish the outcome of that consultation in due course.⁵³
318. With reference to us sharing evidence transparently with a provider, where we decide to open an investigation of a provider we will set out in writing the concerns that have resulted in that decision. Where we intend to take regulatory action (to refuse registration, to impose or vary a specific condition of registration, to impose a monetary penalty, to suspend registration, to deregister or to vary or revoke DAPs), there are processes that are set out in HERA and the regulatory framework by which providers may submit representations and that we would therefore follow.
319. With regard to the publication of decision-making criteria, the conditions and associated guidance set out in our phase two consultation would, we propose, provide the basis for decision-making. It is not appropriate to describe in advance the weight we would give to particular evidence because we consider that the weight to be assigned to specific factors will likely vary depending on the circumstances of a provider, and the particular facts of each case. We do however intend over time to consider publishing case studies that would allow providers to see how decisions may have been reached and the type of evidence that may

⁵³ See www.officeforstudents.org.uk/publications/consultation-on-publication-of-information-about-higher-education-providers/. See paragraph 12.

be used. As part of any representations process with a provider, details of the evidence we have considered and how this has informed our provisional decision is always disclosed.

Enforcement

320. The phase one consultation included information about the OfS's statutory enforcement powers and how we expect to use our enforcement powers in accordance with the regulatory framework.
321. For the avoidance of doubt, when we refer to 'enforcement powers' we mean the powers listed in the phase one consultation to:
- a. impose one or more specific ongoing conditions of registration
 - b. impose a monetary penalty
 - c. suspend aspects of a provider's registration, to include suspending access to student support funding or OfS public grant funding
 - d. vary or revoke a provider's authorisation for degree awarding powers, or revoke a provider's authorisation to use 'university' in its title
 - e. deregister a provider.⁵⁴
322. While we were not consulting on the enforcement actions that the OfS can take, or the circumstances in which we might do so, respondents made a number of comments about these.
323. Respondents generally recognised that the enforcement powers and other types of intervention listed in the consultation were legitimately available to the OfS and accepted the need for the regulator to intervene robustly in response to concerns about quality or standards.
324. Some respondents questioned the circumstances in which these powers would be used, and encouraged careful consideration of the potential consequences of enforcement action, particularly for students. Respondents stated that decisions to use enforcement powers should be transparent and proportionate.

Our response

325. In performing its functions the OfS must have regard to its general duty to uphold the principles of best regulatory practice, including that regulatory activities should be proportionate and consistent and targeted only at cases in which action is needed (see HERA section 2(1)(g)(i) and (ii)). Therefore, in all of its decisions the OfS has regard to its general duties and to the need to act proportionately. Further, the regulatory framework sets out (at paragraph 167) the intervention factors that we will take into account before determining any enforcement action. This means that any sanctions applied will be appropriate and proportionate to the breach in question.

⁵⁴ Consultation on regulating quality and standards (November 2020), paragraph 99.

326. The interventions that we use are designed to normally be used in an escalatory way – for example, a breach might lead to the imposition of a specific condition setting out requirements for improvement, with a subsequent breach attracting further action. Therefore, it is likely that the most significant enforcement actions would follow a period during which we had set out expectations for improvement, and enforcement actions such as suspension and deregistration would only be necessary where there was sustained evidence of failure to maintain quality and standards. It is, however, the case that we are able to use any of our enforcement powers in relation to any breach where it is proportionate to do so. This means, for example, that a single breach with a significant impact on students could result in the use of our most intrusive sanctions.

Unintended consequences of OfS's proposals

327. The consultation asked whether respondents had any comments about any unintended consequences of the proposals, for example for particular types of provider, course or for any particular types of student.

328. A large number of responses were received to this question from all types of respondent. Many respondents also told us about unintended consequences of the proposals in responses to other consultation questions and these have been considered in our responses to the relevant sections. In particular, responses on the unintended consequences of our proposals for particular student groups are considered in the section about equality considerations at paragraphs 277– 282 and unintended consequences for regulatory burden are considered in the section on regulatory burden at paragraph 294-299. This section covers points raised in responses about unintended consequences not covered elsewhere in this document. Where the points made were relevant to other parts of our phase one proposals, including our proposals relating to student outcomes, we will respond to them fully when we publish our more detailed consultation on regulating student outcomes in the autumn.

329. A small number of respondents suggested that the timing of the phase one consultation and likely media coverage could damage the public's confidence in higher education.

330. Other respondents considered that the proposals could result in devaluing some of the courses that professions and employers value, or that they could encourage the higher education sector to move away from the values and purpose on which providers were founded and towards a narrower definition of the purpose of higher education.

331. One respondent took the view that the proposals were designed to lead to the de-registration of providers, thereby reducing the number of English higher education providers. The respondent suggested that the measures proposed would mean that any de-registered providers would more likely come from the most disadvantaged areas of the country and would result in a 'levelling-down' of opportunity across England.

332. One respondent suggested that an unintended consequence would be that the proposals may significantly reduce the willingness of private investors to put funds into higher education because of the risks of regulatory action in relation to matters they believed were outside of their control.

333. Another respondent suggested that the unintended consequences of all quality assessment approaches were that quality declines once requirements are imposed because resources are diverted to the activities that are regulated in an attempt to game the system.
334. A small number of comments focused on unintended consequences relevant to staff. One respondent suggested that academic staff may leave the sector as a result of the additional stress they believe would be added by complying with the proposals.
335. One respondent suggested an unintended consequence would be a potential for political imperatives to influence the approach to academic issues that should remain the prerogative of provider.

Our response

336. We note the comments relating to the risk that our consultation and associated media coverage could damage the public's confidence in higher education. Our purpose as a regulator is set out in our student-focused regulatory objectives. We share the views of respondents that there needs to be public confidence in higher education in England. We consider that effective regulation, where the regulator takes firm but appropriate action when courses do not meet its requirements for quality and standards, only serves to reinforce public confidence in higher education in general and also confidence in a risk-based approach to regulation. In general terms, the transparent mechanisms of regulation, including public consultation on our future approaches, is one of the mechanisms by which public confidence in the OfS as a regulator and so in the higher education sector is maintained.
337. On the points made about narrowing the definition of the purpose of higher education and the risk that quality declines under any quality assessment approach, we consider that our proposals should have the opposite effect. The higher education sector in England is large and diverse. Among the benefits that accrue from adopting an approach that is risk-based and principles-based is that it does not dictate the values or purposes of the providers we regulate and, consequently, those providers are free to develop their missions as they see fit.
338. With reference to comments that the proposals are intended to lead to the de-registration of providers, or will disincentivise private investment, the purpose of our proposals is to protect the interests of students in line with our regulatory objectives. While our proposals allow for the possibility that non-compliant providers could be deregistered, our intention as set out in the phase one proposals, is to use any of our enforcement powers in a way that has regard for our general duty to be proportionate and for our action to be targeted only at cases where action is needed (HERA section 2 (1)(g)(i) and (ii)).
339. While we recognise the risk of any approach to regulation being 'gamed', we consider that a number of features of our proposed approach will reduce this risk. Our outcomes-based approach is an approach based on evidence of the delivery of quality and of standards in practice. We consider that a more rules-based approach to regulation which, for example, specified more narrowly how a provider should quality assure its courses, and subjected all providers to cyclical review of those processes, would be at greater risk of being 'gamed' by providers, in ways that would not be in the interests of students. Again, in bringing forward the proposals set out in the phase two consultation, with reference to any distorting impact on the sector of our proposals we have had regard for our general duty to be proportionate

and for our action to the targeted only at cases where action is needed (HERA Section 2(1)(g)(i) and (ii)).

340. On the points made about unintended consequences relevant to providers' staff, we consider that the phase one proposals set out an approach to regulation that would enable providers to express their own values and purposes, but would allow us to take action, where necessary, in the student interest. We do not see this as a regulatory approach that places stress on staff or would cause particular changes in staff recruitment that would extend beyond that required for providers to ensure that the minimum requirements for quality and standards we are proposing are met.
341. With reference to the impact of political imperatives, the Secretary of State may issue guidance about priorities and we must have regard to that guidance, but as an independent statutory regulator the OfS must reach its own decisions about its regulatory priorities and approach.

Degree awarding powers and university title

342. The phase one consultation did not include proposals about degree awarding powers (DAPs) or university title (UT). However, a very small number of respondents referred to DAPs or UT in their response. We have considered these responses in the context of the elements of our phase two proposals that relate to DAPs and UT.
343. The following comments were made:
- a. One respondent commented that they were unsure how DAPs and New DAPs would be affected by the consultation proposals.
 - b. A further respondent stated that the OfS should be clear about the role of the UK Quality Code for providers in respect of quality and standards. The response highlighted that this is especially relevant for providers seeking to make an application for DAPs.
 - c. One respondent suggested that a separate consultation on the criteria for assessment for DAPs would be welcomed, to improve consistency with the initial conditions of registration for quality and standards.

OfS response

344. In our phase two consultation, we have set out how DAPs and university title would be affected by the consultation proposals. In summary, we propose to take into account a provider's compliance history in relation to the quality and standards conditions as part of our decisions about the authorisation of DAPs or university (or university college) title. More information about these issues is set out in the phase two consultation at paragraphs 108-116. In addition, and as is already set out in the regulatory framework, breaches of conditions may result in enforcement action to vary or revoke a provider's DAPs or to revoke a provider's university (or university college) title.
345. One respondent asked for clarity about the role of the UK Quality Code for providers seeking to apply for DAPs. The criteria for DAPs are set out in Annex C of the regulatory framework –

these criteria do not refer to expectations or guidance set out in the UK Quality Code and are not subject to the phase two consultation.

346. In relation to achieving consistency between the criteria for assessment for DAPs and initial conditions of registration, we take the view that the criteria for each of these are designed to test different things for different purposes. We are, however, proposing in the phase two consultation that where a provider applies to be authorised for New DAPs at the same time as applying for registration we would ask the DQB to undertake a single scrutiny process to provide the information we need to make decisions about both registration and DAPs. That would streamline the process for the provider and reduce the burden of overlapping scrutiny.

The OfS's approach to the consultation

347. Some respondents provided comments about the OfS's general approach to the consultation.
348. Some respondents suggested that the OfS could more fully engage others with the consultation proposals, suggesting earlier, more informal engagement with different stakeholders and groups including the QAA, Ofsted, the Institute, PSRBs and the OIA. In addition, developing an advisory or business partnering approach with providers, closer collaboration with the sector and testing or piloting approaches before implementation were all suggested.
349. Some respondents made comments in relation to the design of the consultation, with some describing the language in the consultation as inaccessible, which made it challenging to respond effectively, particularly for stakeholders such as student unions.
350. Some respondents did not think a phased consultation was appropriate during a pandemic because providers did not have the capacity to fully engage and adequately understand each part.
351. One respondent suggested that the OfS was not consulting at a formative stage of policy development, as they did not consider there was a possibility of revocation or significant amendment of the proposals after considering the consultation responses. The same respondent also considered that the OfS has not demonstrated that it has had regard to other arguments or evidence or that it is open to doing so.
352. Other respondents made suggestions about how future consultations could be improved to help respondents to understand the proposals. The suggestions included:
- a. additional guidance (possibly in the form of infographics or podcasts) alongside a data or metrics consultation
 - b. briefing events for all consultations
 - c. clear links to relevant guidance included in consultations
 - d. clearer and more focussed consultations to reduce burden.
353. Some respondents suggested that the OfS should publish a timetable of upcoming consultations with timeframes which would support providers' internal preparations to

respond to them and that providers should be given time to engage meaningfully with the phase two consultation, and any guidance documents that follow.

Timing and burden of the consultation

354. A number of respondents commented on the timing and the burden generated by responding to this, and other, consultations launched in the context of the pandemic, when providers' capacity to respond has been reduced.
355. These challenges were considered particularly acute because of the scale and significance of change being proposed. It was noted that similar challenges may remain when the phase two consultation was published. There was a request to pause future consultations until the sector was operating in a steadier state.
356. Respondents also considered that the consultation placed additional and unnecessary burden on university staff.
357. There were other comments about the timing of the consultation in relation to how this consultation links to other OfS consultations. Respondents felt that the proposals on quality and standards needed to be considered alongside other OfS proposals, such as the future development of the TEF and the NSS review because they all feed into the wider regulatory framework. Others wanted more information about how different policy areas aligned, with a suggestion that different OfS proposals conflict with one another. The volume of OfS consultations was also criticised because it meant that providers had limited time and resources to engage effectively with all of them. It was also noted that responding effectively to the consultation when the wider policy landscape was turbulent was challenging.

Our response

358. The phase one consultation was published at an early stage of policy development to allow us to gather views about our proposed general approach to inform how we might develop more detailed proposals. We were open-minded about the extent of changes to the proposals that might be necessary as we developed our phase two proposals in response to the phase one consultation. We have made changes where we think these are appropriate (and have set out our responses to the consultation responses within this document and in the phase two consultation). We were not consulting on whether we should continue with the broad approach that is set out (and was consulted on) in the regulatory framework. Therefore, the extent of changes to the proposals in phase one is confined by our established regulatory approach. Although one option could have been to not develop our proposals any further and continue with the current approach to regulation, we decided that would not be appropriate. Our reasons for continuing with the phase two consultation are set out in the phase two consultation document at paragraphs 8-13.
359. The stage of development meant that some parts were necessarily broad or general in their description as we had not formed detailed or final views.
360. We could have published a single stage consultation, but this would have meant we were unable to gather views of stakeholders to inform the development of more detailed proposals.

361. We have considered the requests for further clarity and explanation as we have developed the phase two consultation and have been able to respond to these, underlining the value of a two-stage consultation process.
362. Our consultations are open for anybody to respond. We agree that it is important to ensure a broad range of providers' views are captured and are taken into account and we have done so in developing our phase two proposals. We will reflect on suggestions for how to extend our engagement with the sector, including increased informal engagement, briefing events and podcasts and, where possible, will incorporate these approaches in the future.
363. On 10 June 2021 we published a blog setting out a timeline for further consultation on more detailed proposals. We recognise the exceptionally challenging conditions in which providers have been working through the pandemic and that responding to consultations is difficult. We have limited consultations to those which we consider absolutely necessary to ensure we can regulate in the interests of students, and have increased the response times in recognition of the challenges providers are facing.
364. As a new regulator that is developing its approach to regulation, we have found it necessary to consult actively in this period on a range of policy areas. We have kept the requirements and timing of consultations under careful review during the pandemic, suspending some live consultations and retiming others. As we set out in the phase one consultation, while we were mindful of the pressures being faced across the sector, we have also seen a significant number of questions asked in parliament, in the media and in public about quality in higher education before and during the pandemic. We see the current consultation as essential in enabling the OfS to regulate quality and standards in a way that protects the interests of students and taxpayers when we move back to a more normal regulatory environment. For that reason we decided that the timing of the first consultation was necessary, and consider that taking forward the next phase of the consultation at this time is also necessary, despite the burden we know this creates for providers and other stakeholders.
365. We remain mindful of the feedback we have received on the pressures on providers at this time due to the pandemic and also of the requests from providers in particular for engagement in the form of training or events both in relation to further consultation proposals, and our regulatory activities more generally.

Annex A: Questions asked in the phase one consultation

Questions relating to Proposal 1

Question 1a: Do you agree or disagree with the proposed definitions of 'quality' and 'standards' set out in Table 1 of Annex A and that this should be used to express minimum baseline requirements for quality and standards in revised B conditions?

Question 1b: Do you have any comments about how the proposed definitions of quality and standards set out in Table 1 of Annex A should be assessed for individual providers?

Question 1c: Do you agree or disagree with the proposal in paragraphs 41 to 43 to express initial requirements differently from the equivalent ongoing requirement for providers seeking registration?

Questions relating to Proposal 2

Question 2a: Do you agree or disagree with the proposed approach to assessing student outcomes set out in Annex B?

Question 2b: Are there any other quantitative measures of student outcomes that we should consider in addition to continuation, completion and progression (see Annex B paragraph 18)?

Question 2c: Do you agree or disagree with the proposals for the levels of study at which indicators should be constructed? Should any additional indicators be considered (see Annex B paragraph 25)?

Question 2d: Do you have any comments about an appropriate balance between the volume and complexity of indicators and a method that allows us to identify 'pockets' of performance that are below a numerical baseline (see Annex B paragraph 32)?

Question 2e: Do you agree or disagree with the demographic characteristics we propose to use (see Annex B paragraph 36)? Are there further demographic characteristics which we should consider including in the list of 'split indicators'?

Question 2f: Do you agree or disagree that the longitudinal educational outcomes dataset should be used to provide further indicators in relation to graduate outcomes (see Annex B paragraph 46)?

Question 2g: Do you have any comments about how the range of sector-level performance should be taken into account in setting numerical baselines (see Annex B paragraph 57)?

Question 2h: Do you have any comments about the other contextual factors that should be taken into account and the weight that should be placed on them (see Annex B paragraph 68)?

Questions relating to proposal 3

Question 3: Do you agree or disagree with the proposals in Annex C for monitoring ongoing compliance with regulatory requirements for quality and standards?

Questions relating to proposal 4

Question 4: Do you agree or disagree with the proposals in paragraphs 86 to 101 for our approach to intervention and gathering further information about concerns about quality and standards?

Questions relating to all proposals

Question 5: Do you have any comments about any unintended consequences of these proposals, for example for particular types of provider or course or for any particular types of student?

Question 6: Do you have any comments about the potential impact of these proposals on individuals on the basis of their protected characteristics?

Question 7: Do you have any comments about where regulatory burden could be reduced?

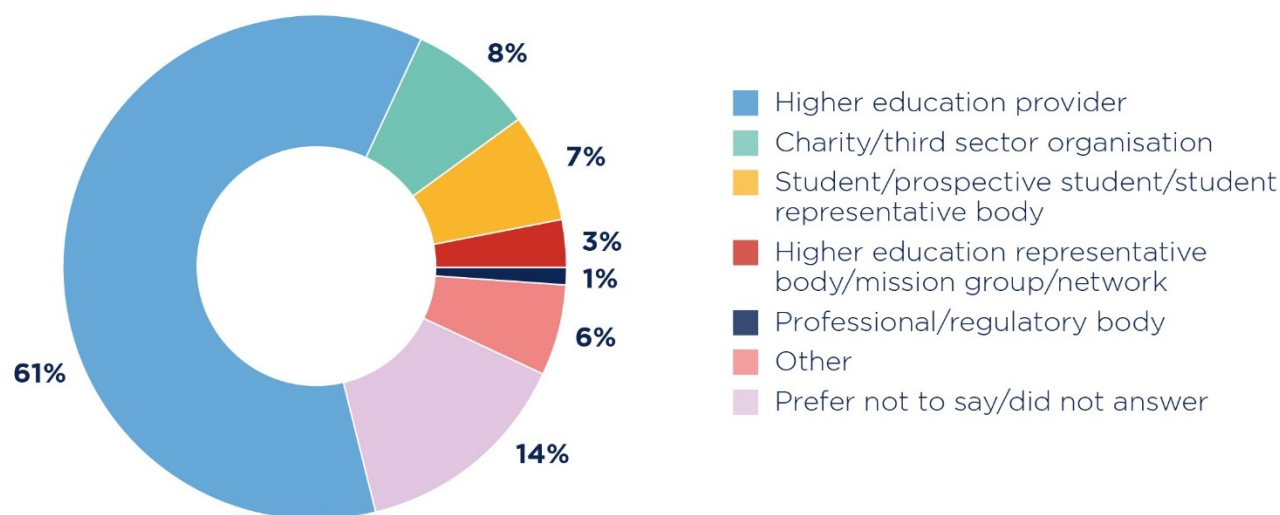
Question 8: Do you have any other comments?

Annex B: Quantitative analysis of responses

366. This section contains some quantitative analysis of responses to the phase one consultation, for additional context. Note that where the graphs in this section refer to numbers in percentages, these have been rounded to the nearest percentage.

367. Of the 271 responses received, 232 indicated their respondent type, categorised in figure 1 below. 204 responses were collective, submitted on behalf of higher education providers or student, sector, or regulatory bodies. 29 responses were made by individuals, most of whom were students or employees in the higher education sector. 38 respondents did not indicate whether they were responding on a collective or individual basis.⁵⁵ The breakdown of responses by respondent type is shown in figure 1.⁵⁶

Figure 1: Breakdown of responses by respondent type



368. For proposal 1, the consultation asked two questions that invited respondents to 'agree' or 'disagree' with the proposals.

⁵⁵ Figures exclude any blank responses.

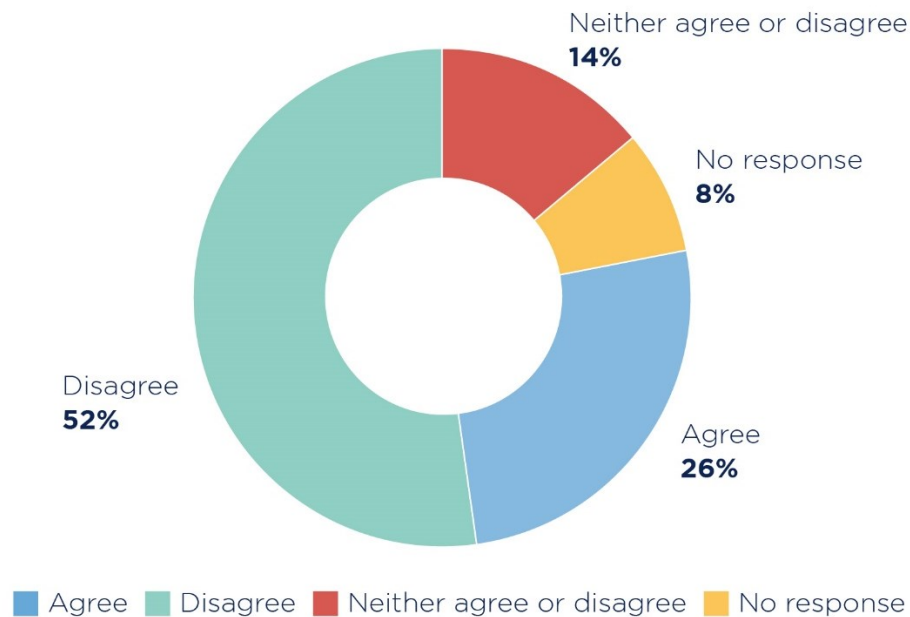
⁵⁶ Based on categories selected by respondent using options provided. Where respondents gave their own more detailed description, this has been attributed by the OfS to the most closely aligned category. Where a respondent did not specify, this has been recorded as 'prefer not to say/did not answer'.

369. Question 1a asked:

Do you agree or disagree with the proposed definitions of ‘quality’ and ‘standards’ set out in Table 1 of Annex A and that this should be used to express minimum baseline requirements for quality and standards in revised B conditions?

Respondents either answered ‘agree’, ‘disagree’, ‘neither agree nor disagree’, or did not give an answer. Of the 250 respondents that answered, 72 agreed, 38 neither agreed or disagreed and 140 disagreed with the proposed definitions.

Figure 2: Proportion of respondents who agreed or disagreed with the question 1a

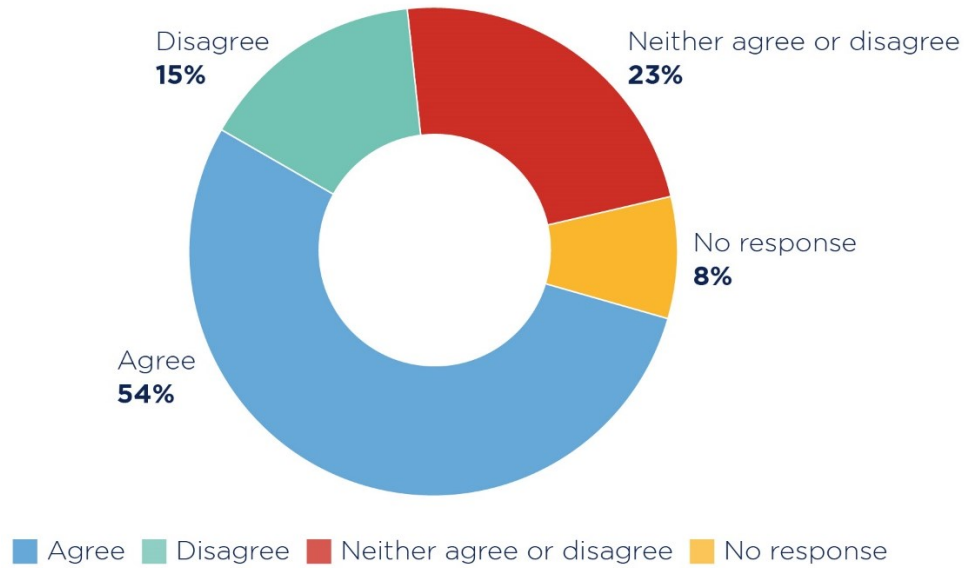


370. Question 1c asked:

Do you agree or disagree with the proposal in paragraphs 41 to 43 to express initial requirements differently from the equivalent ongoing requirement for providers seeking registration?

Respondents either answered 'agree', 'disagree', 'neither agree nor disagree', or did not give an answer. Of the 249 respondents that answered, 146 agreed, 61 neither agreed or disagreed and 42 disagreed with the proposal:

Figure 3: Proportion of respondents who agreed or disagreed with question 1c



Annex C: Proposed definitions of ‘quality’ and ‘standards’ that would represent minimum baseline requirements (Table 1)⁵⁷

Access and admissions	Course content, structure and delivery	Resources and academic support	Successful outcomes	Secure standards
<ul style="list-style-type: none"> Students admitted to a course have the capability and potential to successfully complete their course. The provider’s admissions arrangements identify the additional support students need to successfully complete their course. 	<ul style="list-style-type: none"> The content of a course is up-to-date and assessed effectively. The content and assessment of a course provides educational challenge consistent with the level of the course. The structure of a course is coherent and delivers academic progression through the course. The content and structure of a course allows students to develop intellectual and professional skills. The course is delivered effectively and in a way that 	<ul style="list-style-type: none"> Staff who design and deliver a course are sufficient in number, appropriately qualified and deployed effectively to deliver in practice. Physical and virtual learning resources are adequate and deployed effectively to meet the needs of individual students. Academic support, including specialist support, is adequate and deployed effectively to meet the needs of individual students. Students are effectively engaged in the quality of their educational experience. 	<ul style="list-style-type: none"> Students continue from their first to second year at a rate above the OfS numerical baseline. Students complete their course at a rate above the OfS numerical baseline. Students progress to managerial and professional employment (or employment appropriate to the qualification level) or to higher level study at a rate above the OfS numerical baseline. Students have the right skills from their course once in employment and employers are satisfied with the graduates they employ. 	<ul style="list-style-type: none"> The standards set by the provider (if it is an awarding body) and achieved by its students are consistent with sector-recognised standards. The provider’s assurance arrangements ensure that assessment of students and the resulting awards are valid and reliable. Qualifications awarded to students have value at the point of qualification and over time.

⁵⁷ Table 1 is extracted from Annex A of our consultation on regulating quality and standards (November 2020) available at: www.officeforstudents.org.uk/publications/consultation-on-regulating-quality-and-standards-in-higher-education/

	meets the needs of individual students.			
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Annex D: List of acronyms

DSA

Disabled Students' Allowance

DQB

Designated Quality Body

EIA

Equality Impact Assessment

ESG

European standards and guidelines for quality assurance

HERA

Higher Education and Research Act 2017

HTE

Higher technical education

HTQs

Higher Technical Qualifications

LLE

Lifelong Loan Entitlement

NSS

National Student Survey

PSRBs

Professional, Statutory and Regulatory Bodies

QSR

Quality and standards review

SQE

Solicitors Qualifying Exams

TEF

Teaching Excellence and Student Outcomes Framework

TNE

Transnational education

UKSCQA

UK Standing Committee for Quality Assessment



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