

Office for
Students



Regulatory Notice 4: Regulation of newly registered providers up to 31 July 2019

**Guidance for providers during the
transition period**

Reference **OfS 2018.14**

Enquiries to **regulation@officeforstudents.org.uk**

Date of publication **29 March 2018**

THE OFFICE FOR STUDENTS

Regulation of newly registered providers up to 31 July 2019

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

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

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

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

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

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

Contents

Introduction	1
PART A: Regulatory requirements during the transition period	2
Section 1: Regulatory requirements during the transition period	2
OfS ongoing conditions of registration during the transition	2
Section 2: Complying with the OfS conditions of registration	6
Conditions B1, B2, B3, B4, B5: Quality and standards	6
Condition C1: Guidance on consumer protection law	6
Condition C2: Student complaints scheme	7
Condition C3: Student protection plan	7
Condition D: Financial viability and sustainability	7
Condition E1: Public interest governance	8
Condition E2: Management and governance	8
Condition E3: Accountability	8
Condition E4: Notification of changes to the Register	9
Condition F3: Provision of information to the OfS	9
Condition F4: Provision of information to the DDB	10
Specific ongoing conditions of registration	10
Section 3: Complying with other legal requirements	11
The Prevent duty	11
PART B: The OfS's approach to regulation during the transition period	12
Section 4: Assessing compliance with the OfS conditions of registration	12
Section 5: Actions under the OfS's conditions of registration	13
Interventions	13
Formal sanctions	13
PART C: Annexes	15
Annex A: Financial viability and sustainability	15
Annex B: Reportable events	18
Annex C: Investigations	21

Introduction

1. This regulatory notice sets out how providers will be regulated between 1 April 2018 and 31 July 2019. It applies to a provider that has successfully registered with the OfS and, immediately before its registration:
 - was not designated for public funding under section 129 of the Education Reform Act 1988
 - did not provide any course that was designated for student support under the Education (Student Support) Regulations 2011.
2. The guidance is intended to ensure that providers understand:
 - the regulatory requirements in place from the date of registration until 31 July 2019
 - how to comply with these requirements
 - how the OfS will regulate providers during this period.
3. This guidance constitutes material published by the OfS under section 75 of the Higher Education and Research Act 2017 (HERA) and should be read in conjunction with the regulatory framework (OfS 2018.01) which sets out in full the approach to registration and regulation. If there are any inconsistencies between the regulatory framework and this document then the regulatory framework will prevail.
4. Providers funded by the Higher Education Funding Council for England (HEFCE) during 2017-18 or 2018-19 can find information about how they will be regulated between 1 April 2018 and 31 July 2019 in a separate regulatory notice (regulatory notice 2, OfS 2018.12).
5. Providers designated for student support by the Secretary of State and regulated by the Department for Education (DfE) in 2017-18 and/or 2018-19 (sometimes referred to as 'alternative providers'), can find information about how they will be regulated between 1 April 2018 and 31 July 2019 in a separate regulatory notice (regulatory notice 3, OfS 2018.13). That document includes information for providers designated only for the Disabled Students' Allowance (DSA) by the Secretary of State.
6. The approach that the OfS has taken to the transition period is designed to deliver an equivalent regulatory effect for providers subject to different regulatory regimes: all providers will be subject to some OfS conditions of registration from the date that they are registered and these are more extensive for those providers that are not currently regulated through other means.

PART A: Regulatory requirements during the transition period

Section 1: Regulatory requirements during the transition period

8. The OfS's regulatory framework published in February 2018 (OfS 2018.01) will not come fully into force until 1 August 2019. This means that registered providers subject to this regulatory notice will be regulated on the basis of a subset of our new HERA powers and duties from the date a provider is registered until 31 July 2019. This is called the 'transition period'.
9. The following regulatory requirements will apply once a provider is registered by the OfS:
 - a) A set of general ongoing conditions of registration that will be applied when a provider is registered.
 - b) Any specific conditions of registration that are applied when a provider is registered.

OfS ongoing conditions of registration during the transition

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

General ongoing conditions of registration

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

General ongoing conditions of registration	
Condition B1 Quality and standards	The provider must deliver well designed courses that provide a high quality academic experience for all students and enable a student's achievement to be readily assessed.
Condition B2 Quality and standards	The provider must support all students, from admission through to completion, with the support that they need to succeed in and benefit from higher education.
Condition B3 Quality and standards	The provider must deliver successful outcomes for all of its students, which are recognised and valued by employers, and/or enable further study.

Condition B4 Quality and standards	The provider must ensure that qualifications awarded to students hold their value at the point of qualification and over time, in line with sector recognised standards.
Condition B5 Quality and standards	The provider must deliver courses that meet the academic standards as they are described in the Framework for Higher Education Qualifications at Level 4 or higher.
Condition C1 Guidance on consumer protection law	The provider must demonstrate that in developing and implementing its policies, procedures and terms and conditions, it has given due regard to relevant guidance about how to comply with consumer protection law.
Condition C2 Student complaints scheme	The provider must: <ul style="list-style-type: none"> i. Co-operate with the requirements of the student complaints scheme run by the Office of the Independent Adjudicator, including the subscription requirements. ii. Make students aware of their ability to use the scheme.
Condition C3 Student protection plan	The provider must: <ul style="list-style-type: none"> i. Have in force and publish a student protection plan which has been approved by the OfS as appropriate for its assessment of the regulatory risk presented by the provider and for the risk to continuation of study of all its students. ii. Take all reasonable steps to implement the provisions of the plan if the events set out in the plan take place. iii. Inform the OfS of events, except for the closure of an individual course, that require the implementation of the provisions of the plan.
Condition D Financial viability and sustainability	The provider must: <ul style="list-style-type: none"> i. Be financially viable ii. Be financially sustainable. iii. Have the necessary financial resources to provide and fully deliver the higher education courses as it has advertised and as it has contracted to deliver them. iv. Have the necessary financial resources to continue to comply with all conditions of its registration.
Condition E1 Public interest governance	The provider's governing documents must uphold the public interest governance principles that are applicable to the provider.

<p>Condition E2 Management and governance</p>	<p>The provider must have in place adequate and effective management and governance arrangements to:</p> <ol style="list-style-type: none"> i. Operate in accordance with its governing documents. ii. Deliver, in practice, the public interest governance principles that are applicable to it. iii. Provide and fully deliver the higher education courses as advertised. iv. Continue to comply with all conditions of its registration.
<p>Condition E3 Accountability</p>	<p>The governing body of the provider must:</p> <ol style="list-style-type: none"> i. Accept responsibility for the interactions between the provider and the OfS and its designated bodies. ii. Ensure the provider's compliance with all of its conditions of registration and with the OfS's accounts direction. iii. Nominate to the OfS a senior officer as the 'accountable officer' who has the responsibilities set out by the OfS for an accountable officer from time to time.
<p>Condition E4 Notification of changes to the Register</p>	<p>The governing body of the provider must notify the OfS of any change of which it becomes aware which affects the accuracy of the information contained in the provider's entry in the Register.</p>
<p>Condition F3 Provision of information to the OfS</p>	<p>For the purposes of assisting the OfS in performing any function, or exercising any power, conferred on the OfS under any legislation, the governing body of a provider must:</p> <ol style="list-style-type: none"> i. Provide the OfS or a person nominated by the OfS, with such information as the OfS specifies at the time and in the manner and form specified. ii. Permit the OfS to verify, or arrange for the independent verification by a person nominated by the OfS, of such information as the OfS specifies at the time and in the manner specified and must notify the OfS of the outcome of any independent verification at the time and in the manner and form specified. iii. Take such steps as the OfS reasonably requests to co-operate with any monitoring or investigation by the OfS, in particular, but not limited to, providing explanations or making available documents to the OfS or a person nominated by it or making available members of staff to meet with the OfS or a person nominated by it. <p>The requirements in paragraphs (ii) and (iii) do not affect the generality of the requirement in paragraph (i).</p>
<p>Condition F4 Provision of information to the DDB</p>	<p>For the purposes of the designated data body (DDB)'s duties under sections 64(1) and 65(1) of HERA, the provider must provide the DDB with such information as the DDB specifies at the time and in the manner and form specified by the DDB.</p>

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

Specific ongoing conditions of registration

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

Section 2: Complying with the OfS conditions of registration

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

Conditions B1, B2, B3, B4, B5: Quality and standards

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

17. As part of the registration process a provider will need to demonstrate that it satisfies all of these conditions for quality and standards. Once registered the provider will need to continue to satisfy these conditions. Full guidance can be found in part V of the regulatory framework.

Condition C1: Guidance on consumer protection law

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

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

Condition C2: Student complaints scheme

Condition C2	The provider must: <ul style="list-style-type: none">i. Co-operate with the requirements of the student complaints scheme run by the Office of the Independent Adjudicator, including the subscription requirements.ii. Make students aware of their ability to use the scheme.
--------------	--

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

Condition C3: Student protection plan

Condition C3	The provider must: <ul style="list-style-type: none">i. Have in force and publish a student protection plan which has been approved by the OfS as appropriate for its assessment of the regulatory risk presented by the provider and for the risk to continuation of study of all its students.ii. Take all reasonable steps to implement the provisions of the plan if the events set out in the plan take place.iii. Inform the OfS of events, except for the closure of an individual course, that require the implementation of the provisions of the plan.
--------------	--

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

Condition D: Financial viability and sustainability

Condition D	The provider must: <ul style="list-style-type: none">i. Be financially viableii. Be financially sustainable.iii. Have the necessary financial resources to provide and fully deliver the higher education courses as it has advertised and as it has contracted to deliver them.iv. Have the necessary financial resources to continue to comply with all conditions of its registration.
-------------	--

21. As part of the registration process the OfS will carry out a comprehensive assessment of a provider's financial performance and position. Once registered the provider will need to continue

to satisfy this condition – the information that a provider will need to submit to the OfS during the transition period is set out in Annex A of this document.

22. Full guidance about the ongoing condition of registration can be found in part V of the regulatory framework.

Condition E1: Public interest governance

Condition E1	The provider’s governing documents must uphold the public interest governance principles that are applicable to the provider.
--------------	---

23. As part of the registration process the OfS will assess the extent to which a provider’s governing documents uphold the public interest governance principles. Once registered, the provider will need to continue to satisfy this condition. Full guidance can be found in part V of the regulatory framework.

Condition E2: Management and governance

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

24. As part of the registration process the OfS will assess the extent to which a provider’s management and governance arrangements are adequate and effective. Once registered, the provider will need to continue to satisfy this condition. Full guidance can be found in part V of the regulatory framework.

Condition E3: Accountability

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

25. This condition of registration requires you to comply with the OfS's accounts direction which the OfS will publish in spring 2018.
26. As part of the registration process the OfS will approve the senior officer that a provider nominates as its 'accountable officer'. The OfS will publish guidance about the responsibilities of accountable officers and the action a provider must take if it needs to report any change.
27. The full guidance on this ongoing condition of registration can be found in part V of the regulatory framework.

Condition E4: Notification of changes to the Register

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

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

Condition F3: Provision of information to the OfS

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

30. Once a provider is registered it must continue to satisfy this condition. This includes reporting any of the reportable events listed in Annex B. Providers are able to do this by email to regulation@officeforstudents.org.uk.

31. The full guidance on this ongoing condition of registration can be found in part V of the regulatory framework.

Condition F4: Provision of information to the DDB

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

32. This condition of registration must be applied as soon as a provider is registered because it is listed in HERA as a mandatory condition of registration. However, the OfS does not expect to require providers to provide information to the DDB under this condition during the transition period as the OfS will not have asked the DDB to commence data collection and publication under sections 64 and 65 of HERA until it has published its data strategy later in 2018. These information requirements will commence from 1 August 2019.
33. The full guidance on this ongoing condition of registration can be found in part V of the regulatory framework.

Specific ongoing conditions of registration

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

Section 3: Complying with other legal requirements

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

The Prevent duty

36. From 1 April 2018, the OfS will take on responsibility as 'monitoring authority' of the 'Prevent duty' in the higher education sector as set out in the Counter Terrorism and Security Act 2015 (CTSA). During the transition period, a provider that is currently subject to the Prevent duty will remain so whether it is registered by the OfS or not.
37. From 1 August 2019, the definition of a 'qualifying institution' that is subject to the Prevent duty (set out in section 11 of the Higher Education Act 2004) will be updated to refer to 'an institution in England which is a registered higher education provider' (as defined under section 85 of HERA). This definition will apply to all providers registered with the OfS. The Prevent duty will also continue to apply to those providers not registered with the OfS, but that have over 250 higher education students, and all the autonomous colleges, schools and halls of the universities of Cambridge, Durham and Oxford.
38. The OfS will continue to build on the Prevent monitoring framework that was established by HEFCE. Further information about reporting requirements and the action that will be taken if a provider fails to comply are set out in the Prevent monitoring framework available at www.officeforstudent.org.uk/#documents. Any potential Prevent-related serious incidents should also continue to be reported to the Prevent team.

PART B: The OfS's approach to regulation during the transition period

Section 4: Assessing compliance with the OfS conditions of registration

39. From the date of a provider's registration, the OfS will assess whether it continues to satisfy the ongoing conditions of registration that apply during the transition period. The OfS will do this on the basis set out in the regulatory framework.
40. Where a condition requires a provider to provide information, for example as a reportable event, or to ensure that its entry on the Register is accurate, the OfS will decide whether that information affects the provider's registration status.
41. If the OfS imposes any specific conditions of registration it will monitor the provider's compliance with these.
42. If the OfS sees evidence that a provider has, or might, breach one or more of its conditions of registration it will investigate (see Section 8 below).

Section 5: Actions under the OfS's conditions of registration

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

Interventions

Enhanced engagement

45. If the OfS considers that there is an increased risk of a breach of one or more of a provider's ongoing conditions of registration it may decide to enhance its engagement with the provider on the basis set out in the regulatory framework.

Investigation

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

Specific ongoing conditions of registration

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

Formal sanctions

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

Refusal to agree or renew an access and participation plan

51. When a provider applies to be registered the OfS will assess its access and participation plan (if it applies to be an Approved (fee cap) provider and to charge fees above the basic amount) and will approve the plan if it meets the OfS's requirements. If the plan does not meet the OfS's requirements the plan will not be approved. If a provider has not taken all reasonable steps to comply with the provisions in its access and participation plans and to uphold the commitments made in those plans to the provider's students, the OfS may refuse to renew a plan for a specified period of time. The OfS may also withhold funding or impose a fine in such circumstances.
52. The OfS will make these decisions on the basis set out in the guidance issued by the Director for Fair Access and Participation under section 29 of HERA (see regulatory notice 1 (OfS 2018.03) at www.officeforstudents.org.uk/#documents).

Suspension from our Register

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

Deregistration

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

PART C: Annexes

Annex A: Financial viability and sustainability

1. This Annex sets out the information a provider must submit during the transition period to satisfy the ongoing condition of registration relating to financial viability and sustainability (condition D).

Financial statements

2. Where a provider has new financial statements that have become due since it submitted previous statements as part of the registration process, it must submit the new statements to the OfS, together with updated financial and student number tables and accompanying commentary. A provider's audited financial statements have become due if it is more than four months since the year end to which the financial statements apply.
3. Submission of audited financial statements is a requirement of the ongoing condition of registration regardless of whether this is a legal requirement for a provider or whether it has exemption from filing audited accounts at Companies House or with the Charity Commission due to the size or legal form of the organisation.
4. Some businesses do not need to have audits of their financial data, but the OfS requires that financial statements are audited by an independent external auditor (see below) before submission. This is so that the OfS can have confidence in the information that a provider submits.
5. If a provider submits unaudited financial statements this may be considered evidence of a breach of its conditions of registration.
6. If a provider's financial statements do not become due before 1 August 2019 it does not need to submit audited financial statements, updated financial tables or a commentary.
7. A provider's audited financial statements must include:
 - Statement of comprehensive income (statement of revenue and expense, formerly known as the profit and loss)
 - Statement of financial position (formerly known as the balance sheet)
 - Statement of retained earnings (statement of changes in equity)
 - Cash flow statement
 - Notes to the financial statements.
8. A provider's audited financial statements must contain all of the parts set out above, regardless of whether this is a legal requirement for it or whether it has exemption from including certain parts (such as cash flow statements) due to its size or corporate form.
9. Some businesses do not need to include all parts set out above in their financial statements, but the OfS requires financial statements to include all of these parts. This is so that the OfS has a full

picture of a provider's financial performance and position so that it can make an appropriate, fair and reasonable assessment of its financial viability and sustainability.

10. If a provider submits financial statements that do not contain all of the parts set out above this may be considered evidence of a breach of its conditions of registration.
11. Financial statements must be externally audited by independent auditors. A provider's external auditor must provide an opinion to the governing body¹ on whether the financial statements provide a true and fair view of the financial results for the year. External auditors must report whether in all material respects:
 - The financial statements give a true and fair view of the state of the provider's affairs, and of its income and expenditure, gains and losses, changes in reserves and cash flows for the year. They should take into account relevant statutory and other mandatory disclosure and accounting requirements, and the OfS's requirements.
 - The financial statements have been properly prepared in accordance with the Financial Reporting Standard 102 or International Financial Reporting Standards (IFRS), depending on what is appropriate for the size and type of organisation.
12. Audited financial statements must be signed by the auditor and by the provider's chief executive and the signed version that includes the auditor's report must be submitted.
13. The external auditor's report must cover all parts of the audited financial statements and not be limited to a sub-set of the pages included in the audited financial statements. This is so that the OfS can have confidence that the auditor's opinion applies to all of the information in the financial statements (as set out in the auditor's opinion) and that the auditor has seen the final version of the financial statements that are submitted.
14. If a provider submits financial statements that are not signed by the auditor or for which the auditor's opinion does not cover the all of the pages in the financial statements this may be considered evidence of a breach of its conditions of registration.

Financial tables and commentary

15. If a provider needs to submit audited financial statements it must also submit its audited financial data in updated financial and student number tables. The provider will need to use the template and instructions published by the OfS at www.officeforstudents.org.uk/#documents. The tables provide historic and forecast information about student numbers and about financial performance and position. This enables the OfS to assess financial sustainability and make a judgement about financial risks. The tables must be completed in full.
16. The updated financial and student number tables must be accompanied by a commentary that includes the following:

¹ This is defined as in HERA.

- Assumptions made in the financial tables about the forecast data – this is information and explanation about why the numbers on the tables have been changed between the years to which they apply. This includes, but is not limited to:
 - whether the provider thinks that its student numbers will increase, decrease or stay the same from year-to-year and why
 - whether the provider is planning to change the fees that it is charging students and, if so, by how much
 - whether the provider is planning to take any loans from a bank, shareholders, directors or anyone else and, if so, information about these plans (how much is it planning to borrow, when will this be taken out, when will it be paid back, what will it be used for) and whether it will affect the provider’s viability or sustainability
 - whether the provider intends to change its business model to expand into or withdraw from specific markets (for example distance learning provision).

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

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

Annex B: Reportable events

1. A reportable event is any event or circumstance that, in the judgement of OfS, materially affects or could materially affect the provider's legal form or business model, and/or its willingness or ability to comply with its conditions of registration. Reportable events must be reported to the OfS under condition F3(i) and include, but are not limited to:
 - **A change in the provider's circumstances**, including but not limited to:
 - a sale of either the provider itself, a part of it, or its parent
 - a merger of the provider with another entity
 - an acquisition by the provider of another entity
 - a material change in the provider's business model, such as a move to focus on further instead of higher education
 - a change in the provider's legal status
 - other, similar structural changes, such as the establishment of joint ventures, or the separation of the provider into multiple entities
 - other changes resulting in a change of ownership of the provider.
 - **A change of ownership.** The OfS is principally, but not exclusively, concerned with situations where 50 per cent or more in the shareholding of the registered provider (or the closest equivalent, where the provider is not limited by shares) are, or may be, in common ownership. Common ownership includes:
 - ownership by the same person or entity
 - ownership by multiple entities themselves under common ownership or control
 - ownership by multiple individuals or entities who by agreement or practice exercise their ownership rights in a co-ordinated way (and without restricting the scope of the OfS's understanding of what constitutes common ownership, it will deem people who are 'connected' to be exercising their ownership rights in a co-ordinated way)
 - ownership by multiple individuals or entities on behalf of, or acting under the direction or in the interests of, the same third party, including a case where ownerships are held on trust for a common beneficiary, and
 - any similar structure.

Ownership does not require beneficial ownership. A provider:

- must inform the OfS of any changes in ownership where 50 per cent or more of the ownership of the registered provider is in common ownership, and a change affects the majority ownership rights. This includes the creation of majority ownership rights for the first time, the

transfer of majority ownership rights to a new holder, the introduction of a new entity to majority ownership rights and majority ownership rights coming to an end

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

Some examples of changes that must be reported include:

- where all or any part of the majority ownership rights in the provider change:
 - Example 1: there are five shareholders, each holding 10 per cent of the shares in a provider. They are business partners and act in a co-ordinated way. One shareholder sells their shareholding to the others. This must be notified.
 - Example 2: there are three shareholders, each holding 20 per cent of the shares in a provider. They are business partners and act in a co-ordinated way. One sells a 10 per cent shareholding to a relative who is a connected person. This must be notified.
 - Example 3 There are three shareholders, each holding 20 per cent of the shares in a provider. They are business partners and act in a co-ordinated way. One sells their shareholding to a third party. This must be notified.
 - where additional share capital is issued, or shares are bought back, or the voting rights that attach to existing shares are changed
 - where a controlling proportion of a provider's shares is directly, or indirectly (such as through those of its parent organisation(s)), acquired by another individual(s), partnership(s) or organisation(s).
- **A change of control.** 'Control' has the meaning given by section 1124 of the Corporation Tax Act 2010, and 'change of control' means a change in control so defined. Where two or more entities or individuals, by agreement or practice, exercise their rights in a co-ordinated way, with the result that they together have control so defined, each will be treated as having control of the provider. A provider is required to notify the OfS of any change in the individual(s) or entity/ies who have control of the provider.
 - The provider becoming aware of suspected or actual fraud or financial irregularity.
 - The provider becoming aware of court or legal action.
 - The provider resolving to cease to provide higher education.

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

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

Annex C: Investigations

1. The OfS may investigate if it has concerns about:
 - a) A provider's compliance with the general ongoing conditions of registration that apply during the transition period.
 - b) A provider's compliance with any specific condition of registration that apply during the transition period.
 - c) Matters related to the OfS's monitoring duty under 'Prevent'.
2. The OfS may also investigate if students or others raise concerns with it about any of the areas listed in paragraph 1.
3. Such concerns may be reported directly to the OfS through its notifications and whistleblowing procedure by stakeholders including governing body members, staff, students, external examiners, Professional, Statutory and Regulatory Bodies² (PSRBs), the Office of the Independent Adjudicator (OIA), student representative bodies, and others. This reporting process is not intended to interfere with the ongoing work of the OIA in relation to cases brought by individual students.
4. Where there is sufficient evidence of a serious problem to require further investigation and possible action, the scale and nature of the OfS's intervention will be proportionate to the potential significance of the problem and the risk it represents to students. In investigating, the OfS may:
 - a) work with its partner organisations to ensure a joined-up approach to any investigation – this may include the Student Loan Company, the ESFA and others, depending on the nature of the concerns and the most appropriate approach to understand and address them
 - b) undertake, or ask the QAA to undertake, a tailored review visit where the concerns relate to quality or standards
 - c) undertake, or commission, a review of the provider's management and governance arrangements or any other aspect as necessary to enable the OfS to understand and address any potential issues.
5. If it is necessary to investigate a concern, the OfS will write to the provider to explain the issues and the steps it intends to take. The provider will need to provide whatever the OfS reasonably requires to enable it to complete its investigation. This may include access to people, records, data and information on the provider's premises and/or in its possession, custody or control. The OfS will provide an opportunity for the provider to consider and comment on the evidence and investigation before taking a final decision, except where the OfS decides that it is necessary to suspend the provider's registration (see Section 5 above).

² PRSBs are organisations which are authorised to accredit, approve or recognise specific programmes in the context of the requirements of the PSRB.

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

Entry and search

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



© The Office for Students copyright 2018

This publication is available under the Open Government Licence 3.0.

www.nationalarchives.gov.uk/doc/open-government-licence/version/3/