



Home Office

Tier 4 of the Points Based System: Guidance for Sponsors

Document 4: Higher Education regulatory reform

Version 10/2019 - This guidance is to be used from 31 October 2019

This guidance covers:

- Higher Education reform
- Educational Oversight
- Track record of compliance

Please also see the other Tier 4 Sponsor Guidance documents 'Applying for a Tier 4 licence', 'Sponsorship Duties' and 'Tier 4 Compliance'.

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Glossary

This glossary must be read alongside the glossary to Document 1 of the [Tier 4 Sponsor Guidance](#).

Phrase	Meaning
BCA Core Requirements	The requirements set out in paragraph 2.12 of Document 3 of the Tier 4 Sponsor Guidance .
English Higher Education Provider	Has the same meaning as defined in HERA and the OfS regulatory framework .
HERA	The Higher Education and Research Act 2017 .
Higher Education Provider (HEP)	Has the same meaning as defined in paragraph 6 of the Immigration Rules . We are aware that some HEPs in the Devolved Administrations are not captured in the rules definition and will ensure that any such HEPs which qualify for the full privileges of Tier 4 are not disadvantaged.
OfS	The Office for Students (OfS) is the independent regulator of English Higher Education Providers.

Changes since last publication

Current paragraph number	Previous paragraph number	Changes made
Various		Changed the tense of references to requirement register with the OfS, to reflect the fact that the 1 August deadline for OfS registration has now passed.
4.17	4.17	Added a reference to sponsors in the Devolved Administrations, since they are eligible to gain the full privileges if they meet the requirements.
4.18	4.18	Added information about how the status of Higher Education Providers which gain the full privileges will be displayed on the Tier 4 Register of Sponsors.
4.26-4.28	4.26-4.28	Removed references to the 1 August date and updated the paragraphs to reflect the circumstances of sponsor who gain the privileges in future.

1. Introduction

- 1.1 This guidance sets out the policy on how the Higher Education regulatory reforms and the creation of the Office for Students affects prospective, new and current Tier 4 sponsors.
- 1.2 This is Document 4 of the Tier 4 Sponsor Guidance, which sets out the requirements for education providers wishing to apply for, and hold, a licence to sponsor international students to come to the UK under Tier 4 of the Points Based System. Document 1 covers applying for a Tier 4 licence, Document 2 covers sponsorship duties, Document 3 covers compliance assessments and sanctions for non-compliance, and Document 4 covers the effect of Higher Education regulatory reform on Tier 4 sponsors. Sponsors, and education providers who would like to apply for a Tier 4 licence, should read all four documents and ensure they understand them and comply with them.

2. Higher Education reform

This section gives information on:

- Office for Students
- Providers which are out of scope of HERA
- Devolved Administrations

Office for Students

- 2.1 The [Office for Students](#) (OfS) was established by the [Higher Education and Research Act 2017](#) (HERA).
- 2.2 The OfS is the independent regulator of English Higher Education Providers.
- 2.3 The OfS published its [regulatory framework](#) on 28 February 2018. English Higher Education Providers have been able to apply to join the OfS register since 3 April 2018.
- 2.4 Any English Higher Education Provider which is, or wishes to be, a Tier 4 sponsor must be registered with the OfS, in order to obtain the Educational Oversight required to operate within Tier 4.

Providers which are out of scope of HERA

- 2.5 Tier 4 providers which do not meet the definition of a Higher Education Providers are not affected by these changes and must continue to follow the policies set out in Documents 1 to 3 of the [Tier 4 Sponsor Guidance](#). Students sponsored by such providers will not be affected by the Higher Education regulatory reforms and will continue have the same leave conditions, such as work rights, as at present.

Devolved Administrations

- 2.6 As education is a devolved matter, the OfS does not regulate higher education provision in the Devolved Administrations (Scotland, Wales and Northern Ireland).
- 2.7 New and current Tier 4 providers in the Devolved Administrations therefore remain subject to the Educational Oversight requirements set out in Document 1 of the [Tier 4 Sponsor Guidance](#).
- 2.8 Higher Education Providers in the Devolved Administrations which have established a track record of compliance are eligible to gain the full privileges of Tier 4, as set out in this guidance, provided they meet the requirements.

3. Impact of Higher Education Reform on Tier 4 sponsors

This section gives information on:

- Guiding principles
- Educational Oversight from OfS
- Prospective Tier 4 sponsors
- Current Tier 4 sponsors
- Transitional arrangements

Guiding principles

- 3.1 All education providers that wish to sponsor students under Tier 4 must gain Educational Oversight from the appropriate designated body before applying for a Tier 4 licence. Tier 4 sponsors must maintain satisfactory Educational Oversight throughout the duration of their licence.
- 3.2 The Office for Students (OfS) is the designated Educational Oversight body for Tier 4 sponsors which are English Higher Education Providers.

Educational Oversight from OfS

- 3.3 English Higher Education Providers must register with the OfS to provide Tier 4 Educational Oversight. This includes:
- Higher education institutes (HEIs)
 - Publicly funded colleges providing higher education
 - Private providers which provide higher education, including:
 - alternative providers
 - embedded colleges offering pathway courses, integrated programmes or set up as a joint venture

Further information about the OfS's eligibility requirements can be found in the [OfS regulatory framework](#).

- 3.4 [QAA](#) is the current Educational Oversight body for overseas HEIs. The OfS has made arrangements for the QAA to undertake quality and standards reviews of overseas HEIs, in accordance with Section 23(1) of the HERA. Such providers therefore do not have to register with the OfS.
- 3.5 The OfS provides Educational Oversight at provider level. This means that where an English Higher Education Provider offers courses at RQF level 3 in addition to those at RQF level 4 and above, the Educational Oversight from OfS will cover all its education provision. The provider will not require separate Educational Oversight from another body for its RQF level 3 provision. This does not override any separate requirements for statutory education inspection, for example from Ofsted. Where an English Higher Education Provider offering higher education also requires a statutory education inspection from an Educational Oversight body such as Ofsted, it must meet

the required standard in that inspection in addition to being registered with the OfS, as set out in Document 1 of the [Tier 4 Sponsor Guidance](#).

- 3.6 Where an English Higher Education Provider offers courses at RQF level 3 in addition to those at RQF level 4 and above, and does not sponsor or teach any students under Tier 4 on courses at RQF level 4 or above, it may choose not to register with the OfS. The provider must still maintain Educational Oversight in respect of its RQF level 3 courses. Any provider which takes advantage of this exemption will not be eligible to obtain the [full privileges of Tier 4](#). If it sponsors any Tier 4 students to study at RQF level 4 or above, or teaches any Tier 4 students on a franchise basis on courses at RQF level 4 or above, without first obtaining Educational Oversight from the OfS, this will be treated as a serious compliance failing, as set out in Document 3 of the [Tier 4 Sponsor Guidance](#).
- 3.7 The provider level Educational Oversight provided by the OfS does not override the requirement for each embedded college offering pathway courses, integrated programmes or set up as a joint venture to have its own separate Educational Oversight, if the embedded college is eligible to register individually with the OfS.
- 3.8 Embedded colleges may not be eligible to register individually with the OfS where they form part of a network which is owned by a parent organisation, and:
- do not have their own distinguishable finances (i.e. their accounts are consolidated within those of the controlling entity)
 - do not have a separate and distinct governance structure, governing body and governing documents
 - are essentially under the control of an overarching legal entity, and the legal entity is accountable for these colleges.

The OfS will decide whether an embedded college is eligible to register individually or as part of a network. If the individual embedded college is ineligible to register, the OfS will register the network of embedded colleges at the level of their parent organisation, provided the parent organisation meets the eligibility criteria. In this case, each individual embedded college which is owned by the parent organisation will be listed individually on the OfS register. If the parent organisation loses its Educational Oversight from OfS, its whole network of embedded colleges will lose the ability to sponsor new students, in accordance with the policy set out in Document 1 of the [Tier 4 Sponsor Guidance](#).

- 3.9 Any provider which is outside the scope of the OfS, because it does not meet the definition of an English Higher Education Provider, must continue to gain and maintain Educational Oversight from the relevant body specified in Document 1 of the [Tier 4 Sponsor Guidance](#).

Prospective Tier 4 sponsors

- 3.10 Prospective Tier 4 sponsors which are English Higher Education Providers must apply to register with the OfS. If the provider's application is successful, and they have been added to the OfS Register¹, they can rely on their OfS Educational Oversight in support of a Tier 4 sponsor licence application. To gain a Tier 4 licence, the provider must meet all the relevant requirements set out in the [Tier 4 Sponsor Guidance](#).
- 3.11 If the Tier 4 licence application is successful, the provider will become a Tier 4 Probationary Sponsor and may commence sponsoring students and accruing its track record of compliance. The sponsor will not gain the full Tier 4 privileges until it has successfully established the required [track record of compliance](#).

Current Tier 4 sponsors

- 3.12 Tier 4 sponsors which held a licence prior to 1 August 2019 and are English Higher Education Providers were required to gain OfS registration before 1 August 2019 to maintain their Educational Oversight.
- 3.13 Any such providers which failed to apply to the OfS, or did not gain the required OfS registration before 1 August 2019, no longer had Educational Oversight from that date. They will therefore lose the ability to sponsor new students, in accordance with the Educational Oversight policy, and their CAS allocation will be set to zero. Where applicable, the provider will be made a Legacy sponsor. They will not be able to sponsor new students under Tier 4 until they gain OfS registration.

Transitional arrangements

- 3.14 All Tier 4 sponsors must maintain their Educational Oversight throughout the period of their licence, so Tier 4 sponsors which are English Higher Education Providers must ensure that there is no gap in their Educational Oversight. This means that such sponsors must have been registered with the OfS by 1 August 2019, since their previous Educational Oversight was no longer valid for Tier 4 purposes after that date. Such sponsors were required to apply to the OfS by 15 May 2019 in order to receive a registration decision by 1 August 2019.
- 3.15 Any instances in which a sponsor was unable to meet the 1 August deadline

¹ The Register lists all the English higher education providers officially registered by the OfS. It is a single, authoritative reference about a provider's regulatory status:

<https://www.officeforstudents.org.uk/advice-and-guidance/the-register/the-ofs-register/>

are being considered on a case by case basis, taking account of the reasons why the deadline wasn't met and the extent to which any delay was outside the control of the sponsor. Any sponsors in that situation should notify UKVI as soon as possible if they didn't meet the deadline, if they have not done so already, setting out the causes of the delay, so that operational colleagues can consider the full circumstances of their case before deciding what action to take. Sponsors must send any such notifications to:

Tier4SponsorCompliance@homeoffice.gov.uk. Relevant factors which will be considered include, but are not limited to, whether:

- the sponsor has applied to the OfS to register by the 15 May deadline set out in guidance – this is a key factor
- the sponsor responded promptly to any information requests from the OfS
- there are any other compliance concerns regarding the sponsor.

UKVI will not take action against a sponsor for failing to register with the OfS by the deadline without first giving that sponsor an opportunity to submit representations. Such representations must be made within 20 working days of the date that UKVI requests further information.

4. The full privileges of Tier 4

This section gives information on:

- Full privileges
- Requirements for gaining the full privileges
- Requirements for establishing the track record of immigration compliance
- Requirements for establishing the track record of Educational Oversight
- Action plans: effect on track record
- Gaining the full privileges
- Current Tier 4 sponsors

Full privileges

4.1 A Tier 4 sponsor which has access to the full privileges of Tier 4 is one whose Tier 4 students may be granted conditions of leave which may, depending on the level and length of course being undertaken, include:

- permission to work for a certain number of hours per week
- the ability to be granted further Tier 4 leave from within the UK
- the ability to bring dependants to the UK.

4.2 The full privileges will be available to all Higher Education Providers which have established a track record of compliance. The conditions of leave that their students gain will be based on the level and length of the course being studied, to remain consistent with how these conditions are offered at present. For example, students will be entitled to work for 20 hours per week only if they are studying at degree level or above.

4.3 Higher Education Providers who are eligible to offer the full privileges of Tier 4 will be able to self-assess the English language ability of their students.

4.4 Full details of the privileges were set out in the [Immigration Rules changes](#), laid on 11 December 2018, which came into effect on 1 August 2019.

Requirements for gaining the full privileges

4.5 Any education provider that is registered with the OfS, and has a track record of compliance, as defined in this guidance, will benefit from the full privileges of Tier 4. This includes eligible students sponsored by the provider having permission to work and eligible post-graduate students being allowed to bring their dependants.

4.6 A Tier 4 sponsor which is on the OfS Register must establish a track record of compliance before it gains access to the full Tier 4 privileges. To establish a track record of compliance, a Tier 4 sponsor must have a track record of:

- immigration compliance
- Educational Oversight

Requirements for establishing the track record of immigration compliance

- 4.7 Sponsors must already demonstrate that they are compliant with their sponsorship duties, by passing a Basic Compliance Assessment (BCA) every 12 months, as set out in Document 3 of the [Tier 4 Sponsor Guidance](#). The BCA will be used to determine whether a sponsor has a satisfactory track record of immigration compliance.
- 4.8 A Tier 4 sponsor which is on the OfS register must pass its BCA, as set out in Document 3 of the [Tier 4 Sponsor Guidance](#), for four consecutive years before gaining the full privileges of Tier 4.
- 4.9 When a provider first becomes a Tier 4 sponsor, it does so with Probationary Sponsor status and does not become a full Tier 4 sponsor until it has passed its first BCA. The year spent as a Probationary Sponsor will count towards the four-year track record, provided the sponsor passes its first BCA.
- 4.10 We will revoke a sponsor's Tier 4 licence if it fails its BCA. If a sponsor's licence is revoked, any time that it accrued towards the four-year track record of compliance will be lost. The provider will need to reapply for a new Tier 4 licence, in accordance with the Tier 4 sponsorship policy, if it wishes to regain its licence. If it is granted a new licence, it will need to establish a new four-year track record of immigration compliance before gaining access to the Tier 4 privileges.
- 4.11 If a Tier 4 sponsor which is subject to a discretionary assessment, as defined in paragraphs 2.24 to 2.28 of Document 3 of the [Tier 4 Sponsor Guidance](#), passes its BCA on a discretionary basis, that BCA pass will count towards the four-year track record.
- 4.12 Where the sponsor has either not used any CAS during the BCA assessment period, or has only issued CAS to students who are yet to enrol, the sponsor will not normally be considered to have passed the BCA. Where there are no reasons to revoke the sponsor's licence, UKVI may allow the sponsor to retain their sponsor licence with their current status until their next Basic Compliance Assessment, in accordance with paragraph 2.27 of Document 3 of the [Tier 4 Sponsor Guidance](#). Years in which a sponsor has been allowed to retain its sponsor licence on this basis will not count towards the four-year track record.
- 4.13 In the extremely rare event that, on an exceptional basis, a sponsor is allowed to retain its licence despite failing to meet BCA Core Requirements and being ineligible for a discretionary assessment, as defined in paragraphs 2.24 to 2.28 of Document 3 of the [Tier 4 Sponsor Guidance](#), any time that it accrued towards the four-year track record of compliance prior to failing its BCA Core Requirements will be lost. It will need to establish a new four-year track record of immigration compliance, starting from the date that its next BCA assessment period commences, before gaining access to the Tier 4 privileges.

Requirements for establishing the track record of Educational Oversight

- 4.14 Tier 4 sponsors which are on the OfS Register must also maintain their Educational Oversight consistently for four consecutive years, to show that they are compliant in terms of educational quality, before gaining the privileges. If a sponsor fails its Educational Oversight (including from Ofsted, if it is subject to statutory inspection) at any time during the four-year period, it will not gain access to the full privileges of Tier 4 until it has maintained its Educational Oversight for a four-year period following the date on which its Educational Oversight body notified the sponsor that it had failed its Educational Oversight. This applies even if the sponsor had previously passed its BCA for four consecutive years.
- 4.15 Providers which are subject to Educational Oversight from more than one Educational Oversight body must maintain Educational Oversight from each body. Providers which change their Educational Oversight body during the four-year period may aggregate the time accrued under each body, provided that the Educational Oversight was maintained throughout without any breaks in continuity. If there was a break in the continuity of Educational Oversight, the four-year period will start from when Educational Oversight was re-established.

Action plans: effect on track record

- 4.16 If we impose an action plan, due to compliance failings, on a Tier 4 sponsor which has not yet established a four-year track record of compliance, the time spent on the action plan will be excluded from the four-year period. For example, if a Tier 4 sponsor which has not yet accrued the four-year track record of immigration compliance has an action plan lasting three months imposed on it due to compliance failings, those three months will not count towards the four years. The imposition of an action plan will not reset the compliance track record to zero, so the sponsor can aggregate the time spent as a fully compliant sponsor before and after the action plan was imposed. Once the sponsor has completed its action plan to the satisfaction of UKVI and is again fully compliant, it will recommence accruing time towards the four-year track record.

Gaining the full privileges

- 4.17 Tier 4 sponsors which are on the OfS Register, or are Higher Education Providers in one of the Devolved Administrations, will gain the full privileges of Tier 4 from the date on which they establish a four-year track record of compliance, as defined in this guidance.
- 4.18 UKVI will notify Tier 4 sponsors when they have satisfactorily established the track record of compliance and gained access to the full privileges. Tier 4

sponsors which gain the full privileges will have the status 'Tier 4 Sponsor – Track Record' on the [Tier 4 Register of Sponsors](#).

- 4.19 Once a sponsor which is on the OfS Register has established the required track record of compliance and gained access to the privileges, such access will not be downgraded, nor will its current students' conditions of leave be affected, provided it continues to hold a Tier 4 licence.
- 4.20 Sponsors remain subject to the BCA, Educational Oversight and other compliance requirements, as set out in Documents 1-3 of the [Tier 4 Sponsor Guidance](#) after they have received the full privileges. If they fail to meet the requirements, we will commence action as set out in the [Tier 4 Sponsor Guidance](#), such as revocation of their licence, imposing an action plan or reducing their CAS allocation to zero. If a sponsor has its licence revoked, its current Tier 4 students may be permitted to complete their courses under 'teach out' arrangements, though it will not be able to recruit any further international students. In such circumstances, current students' conditions of leave would not be affected.
- 4.21 A sponsor will lose its track record of compliance if it has its Tier 4 licence revoked after it has gained full access to the privileges. If it successfully reapplies for a licence, it must establish a new track record of compliance before regaining the privileges.

Current Tier 4 sponsors

- 4.22 Current Tier 4 sponsors which already had access to the full Tier 4 privileges prior to the creation of the OfS will retain them, provided they continue to have a Tier 4 licence. Sponsors which are English Higher Education Providers must have gained OfS registration by 1 August 2019 to enable them to continue sponsoring students.
- 4.23 Current Tier 4 sponsors which register with the OfS and do not currently have access to the full privileges, and equivalent Higher Education Providers in the Devolved Administrations, gained them from 1 August 2019 if they had the required track record of compliance, as defined in this section of the guidance, on that date.
- 4.24 Current Tier 4 sponsors which are English Higher Education Providers, or equivalent Higher Education Providers in the Devolved Administrations, but do not have access to the full privileges and did not have the required four-year track record of compliance on 1 August 2019, will not gain full access to the privileges until the date on which they gain the required four-year track record. The time that such a sponsor has already accrued towards the four-year track record will be counted towards the total time required. For example, if such a Tier 4 sponsor has been on the Tier 4 register for three years, and has passed its first three BCAs, it only needs to pass one further BCA to establish the four-year track record of compliance, provided it has also satisfactorily maintained its Educational Oversight throughout that time. Any time which has already been spent on an action plan will not count towards the four-year track

record.

How the date on which a CAS is assigned affects the privileges

- 4.25 It is the date that a Tier 4 application is decided, which is the date on which the CAS is marked as used, that determines whether the student receives the additional conditions of leave such as work rights.
- 4.26 If a CAS is assigned before the date on which a sponsor gains the full privileges, and the CAS is marked as used on or after the date on which the sponsor gains the privileges, the student will benefit from the additional conditions of leave such as work rights.
- 4.27 Sponsor privileges, such as the ability to choose how to assess English language ability, take effect from for the date on which qualifying sponsors gain the privileges. Sponsors cannot anticipate the privileges that they will gain when assigning a CAS before the date on which they gain the privileges. For example, if a CAS is assigned by a sponsor which is eligible to gain the privileges on a future date, the sponsor must still assess English language under the current rules.
- 4.28 Once a sponsor gains the full privileges, it can immediately take advantage of the privileges, such as choosing its own method of assessing English language in respect of CAS assigned on or after the date on which it gained the privileges.
- 4.29 Students whose CAS were marked as used before the date on which the sponsor gained the full privileges will be unaffected and their current conditions of leave will not change as a result of the sponsor gaining the full privileges.