



Department  
for Education

# **Securing student success: risk based regulation for teaching excellence, social mobility and informed choice in higher education**

**Government consultation on behalf of the Office for Students – Guidance on registration conditions**

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# Guidance on initial and ongoing registration conditions, behaviours and evidence

## Overview

1. The OfS is required to consult on, determine and publish initial conditions of registration (which a provider is required to meet to be registered) and general ongoing conditions of registration (which apply to a provider once they are registered). Different conditions apply to providers depending on the category of the register they apply for, and the following table (Table A) summarises the conditions of registration for each category of the OfS's register.
2. All conditions are general ongoing registration conditions. Those which are also initial conditions are indicated in the second column. The table indicates which student objectives the conditions are primarily associated with, although many are also relevant to the other objectives. No conditions are listed against the objective on value for money, as this is relevant to the conditions as a whole.

**Table A**

Ongoing registration conditions	Also Initial condition	Appr Fee cap	Appr	Reg basic
<b>BASELINE ONGOING CONDITIONS</b>				
The below headings indicate which objectives the conditions are primarily associated with and how the OfS's regulatory approach is focused on these risks. This should not be taken to mean that the conditions have no relevance to the other objectives. No conditions are listed against the objective around value for money, as this risk is covered by multiple conditions under the other objectives.				
<b>Objective 1: all students, from all backgrounds, are supported to access, succeed in, and progress from, higher education</b>				
<ul style="list-style-type: none"> <li>Condition A1: "An Approved (fee cap) provider intending to charge fees above the basic amount for qualifying courses must have an access and participation plan approved by the OfS in accordance with HERA, and for any period in which the provider charges fees above the basic amount, the plan must be in force and the provider must take all reasonable steps to comply with the provisions of the plan."</li> <li>Condition A2: " An Approved provider or an Approved (fee cap) provider charging fees up to the basic amount must publish an access and participation statement and must update and re-publish this on an annual basis."</li> </ul>	Yes	√ (Higher fee limit)  OR √ (lower fee limit)	√	
<ul style="list-style-type: none"> <li>Condition A3: "The provider must comply with the Transparency Condition as set out in Section 9 of HERA."</li> </ul>	No	√	√	

<b>Objective 2: all students, from all backgrounds, receive a high quality academic experience, and their qualifications hold their value over time in line with sector-recognised standards</b>				
<ul style="list-style-type: none"> <li>Condition B1: "The provider must deliver well-designed courses that provide a high quality academic experience and enable a student's achievement to be reliably assessed."</li> <li>Condition B2: "The provider must support students, including through the admissions system, to successfully complete and benefit from a high quality academic experience."</li> <li>Condition B3: "The provider must deliver successful outcomes for its students and these are recognised and valued by employers, and/or enable further study."</li> </ul>	Yes	√	√	
	Yes	√	√	
	Yes	√	√	
<ul style="list-style-type: none"> <li>Condition C1 "The provider must ensure the value of qualifications awarded to students at the point of qualification and over time, in line with sector recognised standards."</li> <li>Condition C2: "The provider must deliver courses that match the academic standards as they are described in the Framework for Higher Education Qualifications (FHEQ) at Level 4 or higher."</li> </ul>	Yes	√	√	
	Yes	√	√	√
<b>Objective 3: that all students, from all backgrounds, do not have their interests as consumers protected while they study, or in the event of provider, campus, or course closure.</b>				
<ul style="list-style-type: none"> <li>Condition D: "The provider must be financially viable and financially sustainable and must have appropriate resources to provide and fully deliver the higher education courses as advertised (thus enabling students to complete their courses), and enable the provider to continue to comply with all conditions of its registration."</li> </ul>	Yes	√	√	
<ul style="list-style-type: none"> <li>Condition E1: "The provider must have in place adequate and effective management and governance arrangements to provide and fully deliver the higher education courses advertised, and to continue to comply with all conditions of its registration."</li> <li>Condition E2: "The provider must adhere to its governing documents, which must be consistent with the public interest principles that are applicable to the provider."</li> <li>Condition E3: "The provider must provide to the OfS and publish in their annual financial statements information on the number of its staff members earning a basic salary of over £100,000 per annum. For staff earning a basic salary of over £150,000, this information must include details of total remuneration, and an explanation of how these remuneration packages were decided and justified."</li> <li>Condition E4: "Providers must demonstrate in developing their policies and procedures governing their contractual and other relationships with students that they have given</li> </ul>	Yes	√	√	
	Yes	√	√	
	No	√	√	
	Yes	√	√	

<p>due regard to relevant guidance as to how to comply with consumer law.”</p> <p><i>The OfS recommends that providers consult the CMA’s published guidance for higher education providers. Providers can ensure compliance with the law by seeking independent legal advice. If there is a change in the recommended guidance in future years, the OFS will inform providers in writing</i></p>				
<ul style="list-style-type: none"> <li>Condition F: “The provider must have in force a student protection plan which has been approved by the OfS (which sets out what actions they will take to minimise any impact on the students’ continuation of study should the provider discontinue the course, subject, discipline or exit the market completely) and the provider commits to taking all reasonable steps to comply with the provisions of that plan.”</li> </ul>	Yes	√	√	
<ul style="list-style-type: none"> <li>Condition G: “The provider must cooperate with the requirements of the student complaints scheme run by the Office of the Independent Adjudicator for Higher Education including the subscription requirements and make students aware of their ability to use the scheme.”</li> </ul>	No	√	√	√
<ul style="list-style-type: none"> <li>Condition H: “The provider must publish information about its arrangements for a student to transfer. If the provider lacks such arrangements, it must explain how it facilitates the transfer of a student.”</li> </ul>	No	√	√	
<b>OTHER ONGOING REGISTRATION CONDITIONS</b>				
<p><b>Notification of changes to register to maintain accuracy</b></p> <ul style="list-style-type: none"> <li>Condition I: “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.”</li> </ul>	No	√	√	√
<p><b>Provision of information the OfS and designated bodies require to perform their functions</b></p> <ul style="list-style-type: none"> <li>Condition J1: “For the purposes of assisting the OfS in performing any function conferred on the OfS under any legislation, the governing body of a provider must: <ul style="list-style-type: none"> <li>a) 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 by the OfS</li> <li>b) 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 by the OfS and notify the OfS of the outcome of any independent verification at the time and in the manner and form specified by the OfS</li> </ul> </li> </ul>	No	√	√	√ (limited)

<p>c) take such steps as the OfS reasonably requests to cooperate with any monitoring or investigation by the OfS, in particular (but not limited to) providing explanations or making available documents to the OfS or a person nominated by it or making available members of staff to meet the OfS or a person nominated by it.”</p> <p>The requirements in paragraphs (b) and (c) do not affect the generality of the requirement in paragraph (a).</p> <ul style="list-style-type: none"> <li>Condition J2: “For the purposes of the designated data body’s duties under sections 64(1) and 65(1) of HERA, the provider must provide the designated data body with such information as the designated data body specifies at the time and in the manner and form specified by the designated data body.”</li> </ul>	No	√	√	
<p><b>Mandatory fee limit</b></p> <ul style="list-style-type: none"> <li>Condition K: “A provider in the Approved (fee cap) category must charge fees within the prescribed limits determined by their quality rating and access and participation plan.”</li> </ul>	No	√		
<p><b>Facilitate electoral registration</b></p> <ul style="list-style-type: none"> <li>Condition L: “The provider must comply with OfS guidance on facilitating electoral registration in cooperation with electoral registration officers.”</li> </ul>	No	√	√	
<p><b>Pay OfS and designated bodies’ fees</b></p> <ul style="list-style-type: none"> <li>Condition M: “The provider must pay its annual registration fee and other OfS fees in accordance with regulations made by the Secretary of State and, where applicable, fees charged by the designated bodies.”</li> </ul>	No	√	√	√ (OfS fees only)
<p><b>Terms and conditions of funding</b></p> <ul style="list-style-type: none"> <li>Condition N: “The provider must comply with any terms and conditions attached to financial support received from the OfS and UKRI under sections 41(1) and/or 94(2) of HERA. A breach of such terms and conditions of funding will be a breach of this condition of registration.”</li> </ul>	No	√	√ <sup>1</sup>	√ <sup>1</sup>
<p><b>Accountability</b></p> <ul style="list-style-type: none"> <li>Condition O: “The governing body of the provider accepts responsibility for its interactions between the provider and the OfS, and the provider’s compliance with all of its registration conditions. To assist and enable it to discharge</li> </ul>	No	√	√	√

<sup>1</sup> This condition is only applicable to providers in receipt of grant funding from either UKRI or the OfS, the majority of which will be registered in the Approved (fee cap) category. For more information, please refer to Condition N.

this responsibility, the governing body must designate a senior officer as the ‘accountable officer’ who shall act as the principal contact for the OfS, and must notify the OfS accordingly.”				
<b>Participation in TEF</b> <ul style="list-style-type: none"> <li>Condition P: “The provider must participate in the Teaching Excellence and Student Outcomes Framework (TEF).”</li> </ul>	No	√	√	

**Application of conditions during transition (between registration and start of 19/20 academic year):** To note that the OfS would require conditions F, I, J1 and O to take effect as ongoing conditions immediately after registration. All other conditions, including those that are initial conditions, would not become ongoing conditions of registration until the start of 19/20, although the OfS will consider as part of its risk assessment immediately following registration whether a provider will be able to meet their ongoing conditions once these are applied from 19/20.

3. This document provides draft guidance on the general ongoing conditions of registration. Whilst the language used below appears definitive, we expect to update these conditions based on the feedback we receive to this consultation. This guidance also indicates where a condition is also an initial condition of registration and can be used for the purposes of understanding the supporting evidence and factors the OfS will consider when determining whether or not a provider meets an initial condition. The sections on monitoring and interventions are illustrative – a fuller description of the OfS’s approach to these, and the principles for applying these proportionately, are set out under chapter 5 of the main consultation document. Those providers planning to register during 2018 for the 2019/20 academic year may also want to refer to chapter 9 of the main consultation document on transition arrangements.
4. To note that references to whether a condition is ‘mandatory’ or ‘not mandatory’ concern whether the OfS is required to impose the condition (mandatory) or has discretion to impose the condition (not mandatory). For the provider, both mandatory and not mandatory conditions will be requirements where the OfS chooses to impose them as conditions of registration. Where conditions are mandatory, these reflect existing legislation and are therefore not subject to formal consultation.
5. Certain of the conditions of registration are described as ‘baseline’ ongoing conditions. These relate to the risks of providers not delivering the objectives the OfS has set out for students, as outlined in the table above. Baseline conditions set out, (except where referring to access and participation), the minimum level that a provider is required to meet to be and remain registered. These are expressed as outcomes rather than inflexible absolute values or prescribed processes. Assessment of an individual provider will be made in relation to the baseline requirements and will not be benchmarked against the performance of other providers in the same group, so that providers will be held to requirements based on student needs, not simply by comparison with their peers.

6. This affords the OfS discretion to use its professional judgement in a structured way to develop a proportionate approach in determining what a provider must do to demonstrate compliance with these conditions, taking account of the context of their performance, so that their size, complexity and student characteristics are factored in fairly. However, avoiding and mitigating risks to student interests will be the guiding principle for the OfS and it will not ignore conditions being breached in an individual provider if that breach is widespread.
7. As set out in chapter 5, part E, in cases where a provider breaches its registration conditions or is assessed to be at risk of doing so, the OfS has a range of interventions at its disposal. These range from enhanced monitoring of providers or imposing specific ongoing registration conditions, through to imposing formal sanctions, including monetary penalties, suspension from the register and deregistration. The OfS will need to take a risk-based and proportionate approach in each case to ensure that the appropriate intervention action is taken. The examples of monitoring and intervention set out against each condition below are therefore only illustrative and the full range of interventions and sanctions would be available to the OfS to deal with a breach of any condition.



## Part A: Baseline registration conditions

### Access and Participation (Conditions A1 and A2)

- Condition A1: An Approved (fee cap) provider intending to charge fees above the basic amount for qualifying courses must have an access and participation plan approved by the OfS in accordance with HERA, and for any period in which the provider charges fees above the basic amount, the plan must be in force and the provider must take all reasonable steps to comply with the provisions of the plan.
- Condition A2: An Approved provider or an Approved (fee cap) provider charging fees up to the basic amount must publish an access and participation statement and must update and re-publish this on an annual basis.

#### Summary:

- Applies to:
  - Condition A1: Approved (fee cap) category providers charging fees above the basic amount
  - Condition A2: Approved (fee cap) providers charging fees up to the basic amount and Approved providers
- Initial or general ongoing condition: initial and ongoing condition
- Legal basis: Condition A1: HERA section 12, (mandatory for those within higher fee cap). Condition A2: not mandatory

#### Condition A1: Access and participation plans

##### Legal basis

8. HERA provides for a mandatory condition to be imposed on those providers with a fee limit condition that wish to access higher fee limits (i.e. Approved (fee cap) providers). These providers must have an access and participation plan in force, approved by the OfS.
9. This requirement builds on the requirement in place since 2004, under which HEFCE funded institutions and further education colleges wishing to charge fees at the higher level must have an approved access agreement in place. The establishment of the OfS means that this is an option now open to any provider wishing to be an Approved (fee cap) provider and charge fees up to the higher amount. The scope of the access and participation plan has also been extended, as compared with access agreements, to encompass explicitly successful participation alongside access to higher education, with the aim of supporting the

OfS's general duty regarding equality of opportunity in connection with access to and participation in higher education.

### **Definitions:**

10. The OfS will take "access and participation plan" to mean a document which sets out how a higher education provider charging fees above the basic amount and up to the higher amount intends to safeguard and promote fair access to higher education, and ensure that students have equality of opportunity with regard to successful participation and progression. A plan should set out the provider's objectives and activities and include targets and milestones, set by the provider so that it can measure its progress. It should also set out or explain the tuition fees the provider will charge for qualifying courses, and the expenditure between the basic and higher amounts that it will spend on measures to support access and participation.
11. "Basic amount" refers to the maximum fee amount that can be charged to qualifying persons for qualifying courses by Approved (fee cap) providers without an approved access and participation plan. This is governed in accordance with Schedule 2 of HERA.
12. "Higher amount" means the maximum fee amount that can be charged to qualifying persons for qualifying courses by Approved (fee cap) providers with an approved access and participation plan. This is governed in accordance with Schedule 2 of HERA.
13. "Qualifying courses" means courses to which a fee limit applies in accordance with section 10 of HERA.
14. "Qualifying persons" means those that are prescribed for the purpose of the fee limit condition in accordance with section 10 of HERA.

### **Guidance:**

#### Initial condition of registration:

15. To register in the Approved (fee cap) category and be able to charge above the basic amount for qualifying courses during an academic year for which the access and participation plan is in force, a provider must first have this plan approved by the OfS. Plans are generally approved around a year before they come into force so that providers can publish their fees to prospective students. (For example, plans for the 2019/20 academic year will need to be approved by the OfS during 2018).
16. The OfS will provide guidance on its priorities and expectations for access and participation plans and its approach to approving them, in accordance with

section 29(4) of HERA. By way of an example of the type of guidance that could be provided, respondents may find it helpful to refer to the guidance published by the Director of Fair Access to Higher Education for 2018/19 access agreements under the current legislative regime. This is available at <https://www.offa.org.uk/universities-and-colleges/guidance/annual-guidance/>.

17. The Secretary of State has power under HERA to make regulations regarding the procedure for approving or varying access and participation plans. The Secretary of State also has the power, under section 32 of HERA, to make regulations setting out provisions relating to equality of opportunity that are required to be included in all access and participation plans, alongside any further content that may be included. HERA indicates that the mandatory general contents may include measures to:
  - attract applications from prospective students from under-represented groups in higher education
  - provide or secure the provision of financial assistance to students
  - make information available to students and prospective students about financial assistance
  - set out objectives to promote access and participation
18. The OfS will take the regulations into account when considering the contents of plans for approval and in the arrangements for handling applications for approval. Subject to those regulations, in practice it is expected that the OfS will agree plans with individual providers on a bespoke basis as part of the approval process. This approach permits innovation and provides a challenge to providers to make further progress in this area.
19. The intention is that access and participation plans will be focused on performance, outcomes and targets. In considering plans for approval, the OfS will focus on the risk that a provider does not ensure that students from all backgrounds are supported to access, succeed in, and progress from higher education, and it will expect greater commitment – in terms of investment, activity and progress on outcomes - for those providers where it identifies higher risk with regard to students from disadvantaged backgrounds and groups under-represented in higher education.
20. The OfS will want to ensure that plans are evidence-based and sufficiently resourced to meet their outcomes, as approved by the OfS.
21. Access and participation plans will be expected to cover the “whole student lifecycle”. That means providers should be considering activities to ensure that

students from disadvantaged and under-represented backgrounds can access, succeed in and progress from their higher education course.

### Transition Arrangements

22. For 2019/20, providers will be invited to submit their access and participation plans to the OfS in Spring 2018. It is expected that the Secretary of State will write to the OfS setting out the Government's priorities and expectations for access and participation in higher education. The OfS, through the Director for Fair Access and Participation, will then provide guidance under section 29(4) of HERA which will set out in some detail the priorities and expectations for access and participation plans for the 2019/20 academic year. This guidance will assist providers considering developing a plan, including those who have not done so before.
23. Plans will then be approved as part of the registration process. This will ensure that providers are clear about the fees that they will be able to charge students for the 19/20 academic year, in time for the application cycle starting in September 2018.

### General ongoing condition of registration:

24. Providers will demonstrate compliance with this condition by continuing to have an approved access and participation plan in force and demonstrating that they are making every reasonable effort to deliver the commitments they have set out in their individual plan. Given the bespoke nature of access and participation plans, non-compliant behaviour would be identified on the basis of the commitments made in individual plans.
25. Plans will continue to be approved annually, but the OfS will wish to consider, as part of its risk-based approach to regulation, whether it may be appropriate for the duration of plans to be determined according to the level of risk at some point in the future.

### Monitoring, requests for additional information and specific ongoing conditions of registration:

26. The OfS will monitor the provider's performance based on the outcomes and commitments made in its bespoke access and participation plan. In considering and approving Plans the OfS will be able to use the range of data and evidence available, and in the future, the information from the Transparency Condition. It will seek to do so in a manner that minimises the burden of data collection, where possible, consistently with its other information collections from providers.

27. HERA (s12) makes clear that a provider is not considered to have failed to comply with an equality of opportunity requirement of its plan if it can demonstrate that it has taken all reasonable steps to comply with it. In such instances the OfS may request further information to enable it to assess the steps that have been taken and may be able to impose specific ongoing conditions if appropriate to ensure that reasonable steps are taken. These could, for example, relate to agreeing a set of remedial actions to address areas of concern, to ensure that a provider is making sufficient efforts to meet the commitments made within its access and participation plan. The OfS may provide technical guidance on the monitoring of access and participation activities in accordance with its monitoring objectives.

28. As well as the usual interventions available, including specific conditions or sanctions such as monetary penalties, where the OfS is concerned that a provider has not taken all reasonable steps to deliver a general provision of its access and participation plan and so breached this condition, it has power under section 21 of HERA to notify a provider that it will refuse to agree a new access and participation plan for a period specified in the notice. Further information on this is in chapter 5, part E of the main consultation document.

## **Condition A2: Access and participation statements**

### **Legal basis:**

29. There is no reference to access and participation statements within legislation. This is different from the mandatory requirement for Approved (fee cap) providers charging above the basic amount of fees to have an access and participation plan approved by the OfS.

### **Definitions:**

30. The OfS will take “access and participation statement” to mean a statement published by the provider setting out their commitment to supporting access and participation in higher education by students from disadvantaged backgrounds and under-represented groups.

31. “Basic amount” and “higher amount” have the same meaning as in relation to Condition A1 above.

### **Guidance**

#### Initial condition of registration:

32. As proposed in the Higher Education white paper “Success as a knowledge economy”, providers in the Approved Categories charging fees up to the basic amount will be asked to demonstrate their commitment to supporting access and

participation by publishing an access and participation statement. Statements should be developed prior to registration and published on the provider's website to comply with the initial condition of registration.

33. The content of a statement is at the provider's discretion. It will be informed by a provider's circumstances and the characteristics and needs of its students. It will set out the provider's plans and achievements in this area. Many providers have already published detailed statements as part of their evidence for the Teaching Excellence and Student Outcomes Framework Year 2. Unlike access and participation plans, the content and ambition of statements do not have to be approved by the OfS.
34. Over time it is likely that providers will want to link these statements to the data that will be required under the Transparency Condition (A3, below). This requires certain providers to publish data which will highlight their track records in relation to students accessing and succeeding in higher education.
35. It is important that all providers demonstrate their commitment to supporting access and participation. However, this condition demands a smaller commitment than the requirement for Approved (fee cap) providers charging over the basic amount. That is because providers in the Approved categories charging fees up to the basic amount will not be able to access and use the income from higher level fees, whereas providers charging fees at the higher level must use a proportion of the difference between the basic and higher amount to fund the activities included in their agreed access and participation plans.

#### General ongoing condition of registration:

36. As an ongoing condition of registration providers will be required to update and publish their access and participation statement annually.

#### Monitoring, requests for additional information and specific ongoing conditions of registration:

37. The OfS will check that the provider is publishing an access and participation statement on the provider's website, so it is accessible to students. This transparency will make it available for wider scrutiny and support the sharing of good practice.
38. Beyond 2019-20 the OfS will want to consider the effectiveness of this measure in improving access and participation and may look to place further conditions on this group of providers.

39. If a provider fails to comply with the condition, the OfS will consider which of the range of interventions or sanctions it might want to take to require an access and participation statement to be published in a clearly accessible manner.

## Transparency (Condition A3)

- Condition A3: The provider must comply with the Transparency Condition as set out in Section 9 of HERA.

### Summary:

- Applies to: Approved, Approved (fee cap) categories
- Initial or general ongoing condition: ongoing condition
- Legal basis: HERA section 9 (mandatory)

### Legal basis:

40. HERA section 9 requires the OfS to impose an ongoing registration condition requiring the governing bodies of certain registered providers prescribed by regulations made by the Secretary of State to provide to the OfS and to publish such information as the OfS requests in relation to one or more of the types of data set out in 9(2) and 9(3) of HERA.

41. As set out in the Higher Education White Paper: Success as a Knowledge Economy<sup>2</sup> we intend to apply this, via regulations made by the Secretary of State and laid before Parliament, to providers in the Approved categories.

### Guidance

#### General ongoing condition:

42. Compliance with this condition will mitigate against the risk that a provider does not ensure that students from all backgrounds are supported to join and succeed on its courses. Increased transparency in provider practice will enable potential applicants to make an informed choice about the provider, and encourage providers to implement interventions where their data shows uneven representation. The Transparency Condition is designed to shine a spotlight on the track record of providers in relation to access to higher education by students, subsequent completion of courses, and attainment.

43. This is an ongoing condition: we will not ask for the information at the point of registration, but as part of the initial risk assessment the OfS will seek to assure itself that the provider will be able to meet this condition on an ongoing basis, from August 2019. The OfS will issue technical guidance for providers on complying with the condition at a later date. Once registered the OfS will monitor a provider's compliance.

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<sup>2</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/523546/bis-16-265-success-as-a-knowledge-economy-web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/523546/bis-16-265-success-as-a-knowledge-economy-web.pdf)



44. The Transparency Condition will be a general ongoing registration condition of providers in the Approved categories. The governing bodies of such providers will be required to provide to the OfS and publish such information as the OfS requests in relation to the following:
- a. the number of applications for admission on to higher education courses that the provider has received
  - b. the number of offers made by the provider in relation to those applications
  - c. the number of those offers accepted
  - d. the number of students who accepted those offers that completed their course with the provider
  - e. the number of students who attained a particular degree or other academic award, or a particular level of such an award, on completion of their course with the provider
45. In each case, the information captured must be broken down by the following characteristics:
- a. the gender of the individuals to which they relate
  - b. their ethnicity
  - c. their socio-economic background.
46. The provision and publication of data should be done on an annual basis to capture the latest annual data. The OfS will initially only require data regarding undergraduate students but may request information on postgraduate students in future.
47. The information needed is already captured through HESA returns and through UCAS for those who use UCAS. However, providers will also need to ensure that they are providing the information easily and accessibly on their admissions web pages.
48. The OfS recognises that not all applicants use UCAS and not all providers currently submit returns to HESA. Where this is the case, providers should consider the systems they need to have in place to collect and then publish and share this data.
49. The Transparency Condition is entirely separate from the Public Sector Equality Duty (PSED), and providers are expected to comply with both. The Transparency Condition does not supersede the need to comply with the PSED. Some elements of the Transparency Condition may be complementary to elements of the PSED, but they remain distinct requirements and the Transparency Condition does not displace the PSED. The Transparency Condition is discrete and focuses

on gender, ethnicity and socio-economic background. The PSED by contrast is broader, taking account of a wider range of characteristics and requiring public bodies to set equality objectives. Information on the PSED is available at [www.gov.uk/guidance/equality-act-2010-guidance](http://www.gov.uk/guidance/equality-act-2010-guidance).

#### Guidance on presentation of information to students and prospective students

50. As one aim of making this information available is to inform decision-making, it will be important that it is presented in a way that is understandable to students.
51. In order to comply with the Transparency Condition providers will need to ensure that the information is presented on the admissions pages on their websites so that it is easily accessible for students and for anyone who might be seeking this information.
52. While the condition requires that individual providers publish this information, and share the data with the OfS, the OfS may also make the data returned to it available through a central service and/or as an open dataset for use by other information providers.

#### OfS consultation on characteristics contributing to transparency

53. During the passage of HERA, the Government made a commitment to ask the OfS to consult on what other information, over and above that required to be published by the Transparency Condition, the OfS would encourage individual institutions to publish with a view to making their record on widening participation for disadvantaged and under-represented groups even more transparent. The new information will not become part of the Transparency Condition, which is discrete and limited to the information set out in HERA.
54. Government will set out its expectations for the consultation in the first set of guidance to the OfS, which will be issued alongside or shortly after the launch of the OfS in January 2018.

#### Monitoring, requests for additional information and specific ongoing conditions of registration:

55. OfS monitoring will take into account the accuracy and timeliness of data supplied. It may also ask providers to supply information on where the Transparency information is being made available for students and others with an interest. Where there are any problems with the information being made available, the OfS may take steps to support compliance, whether through enhanced monitoring or specific conditions. These might for example require the nominated accountable officer to oversee a particular course of action designed to ensure that information is gathered more effectively or made more easily accessible.

## Quality and Standards (Conditions B1, B2, B3, C1 and C2)

- Condition B1: The provider must deliver well-designed courses that provide a high quality academic experience and enable a student's achievement to be reliably assessed.
- Condition B2: The provider must support students, including through the admissions system, to successfully complete and benefit from a high quality academic experience.
- Condition B3: The provider must deliver successful outcomes for its students, which are recognised and valued by employers, and/or enable further study.
- Condition C1: The provider must ensure the value of qualifications awarded to students at the point of qualification and over time, in line with sector recognised standards.
- Condition C2: The provider must deliver courses that match the academic standards as they are described in the Framework for Higher Education Qualification (FHEQ) at Level 4 or higher.

### Summary:

- Apply to: Approved and Approved (fee cap) categories. C2 additionally applies to Registered basic providers.
- Initial or general ongoing conditions: ongoing conditions
- Legal basis: HERA section 13 (not mandatory)

### Legal basis:

56. HERA 13(1)(a) specifies that the OfS may set 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)”.

57. HERA 13(2) and (3) provides that standards are to be “sector-recognised standards” where such standards exist. “Sector recognised standards” means standards that apply to higher education and accord with guidance which (a) is determined by persons representing a broad range of registered higher education providers, and (b) commands the confidence of registered higher education providers. We will ensure that we deliver on this by linking the standards conditions only to those standards that are sector-recognised.

58. HERA 23(2) imposes a duty on the OfS to assess, or make arrangements to assess (through the designated quality body) for the purpose of determining whether providers are satisfying their initial or ongoing registration conditions relating to quality and standards.

## Guidance

### Registration conditions

59. HERA provides that the OfS may set a registration condition relating to the quality of, or the standards applied to, the higher education provided by the provider. HERA does not require a condition to be set in this area, but it is clear that the quality of their education and the standard of their qualifications matters very much to students. This is reflected by the fact that one of the four objectives to students that the OfS is seeking to mitigate risks against through the imposition of registration conditions is the following in relation to quality and standards:

- all students, from all backgrounds, receive a high quality academic experience, and their qualifications hold their value over time in line with sector-recognised standards

60. These risks to students will be mitigated by the imposition of registration conditions that determine the minimum 'baseline requirement' for quality and for standards, both at the point at which a new provider seeks to enter the higher system and then on an ongoing basis. The conditions are set out in table A above.

61. In common with the approach that the OfS is taking across the regulatory framework, these conditions are expressed in terms of outcomes, i.e. they determine what the OfS expects providers to achieve rather than how they might achieve it. All providers in the Approved categories must be able to meet the registration conditions. This approach will ensure that all students, wherever and however they study, will receive education that meets or exceeds the same high standard expected of all providers. But the approach does not enforce a single model of delivery, nor seek to determine the extent to which an individual provider should offer provision of a quality beyond the minimum acceptable baseline. These are rightly decisions for autonomous providers to take.

### Approach to assessing compliance with the initial conditions

62. A new provider seeking registration in the Approved categories of the OfS register must demonstrate that it is able to meet the initial conditions for quality and standards.

63. The OfS will seek to commission a Designated Quality Body under section 27 of HERA to provide or arrange an expert peer-led judgement for the purpose of determining the extent to which the provider is able to demonstrate that it is able to meet these conditions. See below for more information about the relationship between the OfS and the Designated Quality Body.

64. The detailed approach taken by the Designated Quality Body, including the evidence requirements and the method for review, will form the basis of a consultation to be undertaken by the body once it is designated by the Secretary of State. In the event that a body is not designated, the OfS will itself consult on the approach to be taken. Our preference for the approach to the assessment of quality and standards for new providers seeking to enter the higher education system is to use a re-formulated UK Quality Code as a core component (see below or more information about this).

65. It is expected that the approach to be taken will include a visit to the provider. It is also expected that the approach will be designed to ensure that a provider without a track-record of delivering higher education is able to demonstrate that it is able to meet these conditions. In such cases, a review team will consider the likelihood that the provider is able to meet the initial conditions and will reach a judgement about its capacity to meet general ongoing conditions into the future. A review team may consider, for example, a combination of the following in reaching this judgement:

- a relevant track record of successful delivery of higher education in other countries
- suitable and experienced staff
- an appropriately designed curriculum and course materials
- appropriate teaching and learning facilities
- appropriate mechanisms and assessment methodologies to assure degree standards and the quality of the academic experience

66. This approach is designed to make it easier and quicker for a new provider to enter the higher education market, but only if it can demonstrate that it has the potential and arrangements in place to deliver high quality provision and protect standards.

67. The OfS will use the assessment of the DQB to determine whether conditions B1, B2, C1 and C2 are met, working closely with the DQB in doing so. Where the provider has a track record of delivering higher education, the OfS itself will assess whether the provider is able to meet condition B3. It will do this on the basis of evidence in the following areas:

- non-continuation and non-completion rates
- degree and other HE outcomes, including differential outcomes for students with different characteristics
- graduate employment and, in particular, progression to professional jobs and postgraduate study

68. The evidence used to determine whether the provider is able to meet initial condition B3 will consist of the actual performance of the provider over time rather than its performance when compared to a sector-adjusted benchmark. This approach is designed to ensure that a minimum absolute level of performance is used to determine whether a provider may be registered (taking into account the context of that provider), rather than a view of the provider's performance as compared to other providers. This is in accordance with the OfS's general regulatory approach to safeguard the high minimum acceptable level of performance in areas that matter to students.
69. As it considers whether a provider meets the initial conditions, the OfS will also undertake a risk assessment, drawing on the DQB's judgement through its quality review, to establish the extent of the risk that the provider will not comply with its ongoing general conditions. The risk assessment will determine the appropriate pattern of monitoring for the provider, with an assumption that, for providers where the risk of non-compliance is low, monitoring will consist only of the use of lead indicators as set out in chapter 5 of the main consultation document. If the OfS is concerned about the risk of future non-compliance in the area of quality and standards, monitoring may be more frequent and/or more intensive (see below in the context of monitoring these as ongoing registration conditions) and the OfS might set specific ongoing conditions such as, but not limited to:
- the provider may be required to implement an agreed action plan in areas of concern
  - the designated quality body may be asked to complete a further quality review visit, using the same approach as used for new providers, within a certain timeframe
  - student number controls may be imposed by the OfS
70. Exceptionally, and for the initial registration application only, those alternative providers that already have courses specifically designated for student support, HEFCE funded providers, and those providers that are applying for specific course designation for 2018/19, who apply to register with the OfS in time for the 2019/20 academic year, will be assessed against the Quality and Standards conditions set out in this document using the outcomes of the current Quality Assessment arrangements. As part of this process the OfS will use the latest available quality judgement made under existing arrangements, supplemented with requested data/metrics, as a proxy for determining whether or not providers that apply to be registered with the OfS have met the Quality and Standards conditions, and to assess the risk of providers breaching those conditions.
71. However, the current (QAA) approach to Quality Assessment does not lend itself well to assuring the quality of entirely new providers (i.e. those providers that

have not started to deliver higher education to students) as it tends to test the systems and process that are already supporting the delivery of higher education. This will be addressed by the new Quality Assessment system that DQB will be tasked with producing (as set out above). The OfS will work with the DQB to implement this new Quality Review System as soon as possible, and not later than 1st August 2018 (the start of the 2018/19 academic year). Those 'start-up' providers that wish to register with the OfS in time for the 2019/20 academic year will be tested against the initial Quality and Standards registration conditions through the new Quality Review system.

### Approach to assessing compliance with the ongoing registration conditions

72. Once registered, for providers for which the risk of non-compliance with general ongoing conditions for quality and standards is considered to be low, the OfS will use its routine approach to monitoring as set out in chapter 5 of the main consultation document. The use of lead indicators in this way is designed to allow the OfS to identify any increased risk that a provider may breach its conditions of registration. In the area of quality and standards, the lead indicators are likely to cover the following areas:

- TEF ratings
- referrals from the Chair of the TEF panel which will be made if they consider, following a TEF assessment, that there is a risk that the provider is not meeting baseline quality or standards.
- overall student numbers and, in particular, patterns that might suggest unplanned and/or unmanaged over- or under-recruitment
- changes in student entry requirements and the qualifications profile of students on entry
- non-progression and non-completion rates
- the number, nature and pattern of student complaints to the OIA
- degree and other HE outcomes, including differential outcomes for students with different characteristics, or where there is an unexpected and/or unexplained increase in the number of firsts and 2:1s awarded
- graduate employment and, in particular, progression to professional jobs and postgraduate study
- graduate earnings based on the LEO dataset

73. Again, these indicators will reflect the actual performance of the provider over time rather than its performance when compared to a sector-adjusted benchmark. However, this approach will not involve setting an explicit numerical target for, for example, non-continuation. The indicator is designed to identify any area in which further investigation and/or discussion with the provider is required

to understand the performance and the reasons for this rather than to define specific regulatory action.

74. Routine monitoring will also include the assessment of reportable events that a provider is required to tell the OfS about. For quality and standards, reportable events are likely to include, but not be limited to the following:

- loss of accreditation by a Profession, Statutory and Regulatory Body
- material unplanned changes in student numbers

75. Routine monitoring of lead indicators, the assessment of reportable events and consideration of any concerns raised by students or other stakeholders will be undertaken by the OfS itself, drawing on the expertise of the DQB as necessary. The OfS may ask a designated quality body to undertake more detailed scrutiny of quality and standards issues in an individual provider should the OfS consider this necessary. Such activity may lead to a change in the provider's risk assessment, with additional monitoring requirements and/or the imposition of specific ongoing conditions (as set out above).

76. This approach to monitoring is designed to deliver frequent and/or intensive scrutiny where it is clearly needed, and less regulatory burden where there is strong evidence that a provider is maintaining the high levels of quality and standards that students and tax payers expect.

77. Where the risk of future non-compliance with a provider's ongoing registration conditions is considered to be increased, either at the point of initial registration or on the basis of a revisited risk assessment, the OfS may put in place more frequent or more intensive monitoring to supplement the lead indicators which may be undertaken by the DQB dependent on the nature of this monitoring.

78. Set out below against each condition are examples of behaviours that may indicate compliance or non-compliance with the condition.

Condition B1: The provider must deliver well-designed courses that provide a high quality academic experience and enable a student's achievement to be reliably assessed

79. The behaviours that may indicate compliance with the Condition are:

- the provider takes full responsibility for the quality of their higher education provision, irrespective of where or how their courses are delivered or who delivers them

80. The behaviours that may indicate non-compliance with the Condition are:



- the OIA or the OfS receive a pattern of complaints about the quality of the academic experience

Condition B2: The provider must support students, including through the admissions system, to successfully complete and benefit from a high quality academic experience

81. The behaviours that may indicate compliance with the Condition are:

- the data for the provider published under the transparency condition suggest that there is fair access to the provider's courses for students from all backgrounds
- student progression and completion data suggests that the provider has a reliable and fair admission system that results in students being matched to appropriate courses and provided with the support necessary for a high quality academic experience and successful completion<sup>3</sup>.

82. The behaviours that may indicate non-compliance with the Condition are:

- students are recruited to courses for which they do not have the capability to achieve a successful outcome
- the quality of the education and the support provided to students does not match the needs of the students a provider recruits
- the OfS receives a pattern of complaints about the provider's admissions system

Condition B3: The provider must deliver successful outcomes for its students, which are recognised and valued by employers, and/or enable further study

83. The behaviours that may indicate compliance with the Condition are:

- the outcomes achieved by the provider's students meet a minimum acceptable baseline set by the OfS
- the outcomes achieved by the provider's students suggest that students from all backgrounds are able to succeed
- patterns of degree classifications over time

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<sup>3</sup> HERA 2(8)(iii) makes clear that providers are free to determine the criteria for the admission of students – OfS expects providers to ensure that whatever criteria is used, student's support needs are identified and acted upon.

Condition C1: “The provider must ensure the value of qualifications awarded to students at the point of qualification and over time, in line with sector recognised standards.”

84. The behaviours that may indicate compliance with the Condition are:

- students achieve the threshold academic standards set out in the qualifications framework
- the provider uses assessment and classification processes that are reliable, fair and transparent
- students achieve standards beyond the threshold level that are reasonably comparable with those achieved in other UK providers

85. The behaviours that may indicate non-compliance with the Condition are:

- the OfS identifies concerns about the security of standards, whether provision is delivered by the provider or by a partner
- students and/or alumni report that certification and records of study are not provided to them
- the standards of qualifications above the threshold change significantly over time and thus impact on their value

Condition C2: “The provider must deliver courses that match the academic standards as they are described in the Framework for Higher Education Qualification (FHEQ) at Level 4 or higher”.

86. The behaviours that may indicate compliance with the Condition are:

- the standards set, and/or maintained, by the provider are consistent with the qualifications framework

87. The behaviours that may indicate non-compliance with the Condition are:

- the OfS identifies concerns about whether the standards set by the provider are consistent with the qualifications framework

### **Designated Quality Body**

88. The Secretary of State has the power, on the advice of the OfS, to designate a body to carry out the quality and standards assessment functions set out in section 23 of HERA. Schedule 4 of HERA sets out the process of designation and the framework for the relationship between the OfS and a designated body.

89. In parallel with the current consultation on the OfS regulatory framework, we are also consulting on behalf of the OfS on whether a suitable body exists for

designation. The OfS will consider the responses to this parallel consultation and will decide whether it is able to make a recommendation to the Secretary of State. Without prejudicing the outcome of the consultation, we expect that a suitable body could be designated in the spring of 2018.

90. When a designated body is in place, the designated quality body will be under a duty to perform assessment functions on behalf of the OfS, for example to design and operate a quality assessment system. Although the OfS can ask the SoS to designate a DQB to undertake the quality and standards assessment functions – it is the responsibility of the OfS to ensure that the arrangements that are made to undertake these assessments are fit for purpose and coherent with the OfS’s approach to regulation more broadly.
91. The approach taken by the designated body to the assessment of quality and standards will be determined by the designated body within parameters set by the OfS. The OfS has power to give general directions to a designated body, but in doing so, the OfS also must have regard to the body’s expertise and its ability to make an independent assessment of an individual provider. We anticipate that in relation to quality and standards, the OfS will determine whether an individual provider meets initial and ongoing registration conditions – having taken advice from the DQB.
92. For more information about the DQB see the parallel consultation *Designated Quality Body*.

### **The role of the UK Quality Code for Higher Education**

93. For a number of years, the UK Quality Code for Higher Education has been adopted to express common requirements across the different quality assessment systems in the UK. It is the Code that has underpinned a UK-wide approach to quality even as the policy contexts have increasingly diverged. And it is the Code that gives expression to co-regulation of quality and standards.
94. As set out above, our preference for the OfS approach to the assessment of quality and standards for new providers seeking to enter the HE system is to use the Quality Code as a core component. We have taken this view not least because we value its co-regulatory and UK-wide nature. However, our support for the current version of the Quality Code is qualified. In its current guise the Code does not present a comfortable fit with the OfS approach to regulation that sets out a framework of key principles and minimum baselines that individual providers are then free to interpret and make relevant to their own contexts.
95. For example:

- the elements of the Code that are prescriptive of provider behaviour, particularly those elements that focus on a provider's systems and processes, are likely to stifle innovation and diversity of practice at a time when providers need to be agile and flexible
- some elements of the current Code are no longer relevant: the OfS's extensive duties and powers in relation to data and information transparency and publication makes Part C of the current Code, which deals with information provision for prospective and current students, redundant
- the current Code is explicitly framed to drive and assess continuous improvement in individual providers, but the OfS approach to regulation of individual providers focuses on baseline conditions only

96. These concerns have led us to conclude that the current Code needs to be reformulated if it is to be fit-for-purpose in the new regulatory environment in England. In particular, there needs to be better alignment between the OfS outcomes-focused approach to regulation and the way that the Expectations of the Code are expressed.

97. In parallel to this consultation on the OfS regulatory framework, the UKSCQA, working alongside the QAA, is consulting on an approach to reformulate the UK Quality Code. This consultation proposes that the current nineteen Expectations be recast as a smaller number of outcomes-based Expectations underpinned by a number of 'core practices'. It is proposed that these elements are shared across the UK and it is these two elements – the Expectations and the core practices – that are the subject of the UKSCQA's current consultation. In addition, the consultation makes provision for the development of supplementary practices that may be used differently in the four nations as appropriate for each context.

98. The Committee intends to develop these supplementary practices as part of a longer piece of work with the sector to ensure that those components that relate to 'enhancement' and 'continuous improvement' that might be useful to individual providers, but that are not within the scope of the OfS's regulatory approach, are maintained separately from the regulatory material. Under this approach the Quality Code will continue to contain elements that support continuous improvement, with the DQB free to build distinctive services around quality enhancement/ improvement that would be funded by separate voluntary subscriptions. These elements will not, however, be included in registration conditions.

99. The UKSCQA is working to conclude its consultation, and to finalise a revised set of Expectations and core practices during the spring of 2018. This revised Code if suitably redrafted could be used to underpin the assessment of quality and

standards conditions of registration. The OfS will carefully follow the work of the UKSCQA, and evaluate whether or not the revised Code, which must continue to be applied across England and the Devolved Administrations, and continue to serve the different regulatory approaches across the Devolved Administrations, proves to be a suitable reference point for the quality and standards conditions of registration. If it does not, the OfS will task the DQB to work with the sector to develop a set of reference points to underpin the new Quality Review system that provides a more appropriate fit with the OfS's broader approach to regulation.

### **The relationship between quality assessment and the Teaching Excellence and Student Outcomes Framework**

100. A registered provider will not be allowed to participate in the Teaching Excellence and Student Outcomes Framework (TEF) if it does not continue to meet its ongoing registration conditions for quality and standards
101. As set out above, the indicators that the OfS will use as part of its approach to ongoing monitoring will reflect the actual performance of the provider over time rather than its performance when compared to a sector-adjusted benchmark. This means that the regulation of each individual provider will ensure that it is delivering a minimum level of performance for its students.
102. For example, Condition B2 is clear that all providers must support students, including through the admissions system, to successfully complete and benefit from a high quality academic experience. A behaviour for this condition is that the provider's progression and completion data suggests that the provider is matching applicants to appropriate courses and providing the support necessary for their success. A low risk provider will have its compliance with this ongoing condition and the required behaviours monitored through lead indicators, most notably through non-progression and non-completion indicators.
103. The use of 'absolute' data for lead indicators, rather than sector benchmarked indicators, is important – because the conditions describe the high minimum level of performance expected of all providers. It is for the OfS to determine, given a provider's context, whether or not the lead indicator for non-progression and non-completion suggest the need for further investigation e.g. whether or not an in-depth Quality Review needs to be undertaken to assess the extent to which a provider is operating an admission system that results in students being matched to appropriate courses and provided with the support necessary for a high quality academic experience.

104. By contrast, TEF will continue to make use of benchmarked indicators as it seeks to assess the extent to which a provider is performing beyond the minimum regulatory baseline.

105. The OfS will also make use of the contextual information provided by a provider's TEF rating as part of ongoing monitoring and risk assessment. For example, a TEF Gold provider may be more likely to increase its student numbers because it is responding to increased demand, whereas a provider without a TEF rating, or with a Bronze rating, may be more likely to anticipate a more challenging recruitment environment.

### TEF Eligibility

106. A consequence of the OfS's assessment of an extent to which a provider continues to meet its ongoing conditions for quality and standards will be the provider's eligibility for TEF.

107. We propose that any provider that is or has been in breach of one or more of its quality and standards conditions is disqualified from TEF participation until such time as this breach is remedied. Any TEF rating that the provider already has will also be removed. This will ensure that where the OfS has significant concerns over quality, but is not at the point that deregistration would be considered to be an appropriate regulatory response, such a provider will not be TEF eligible.

108. Once the provider is assessed to be again compliant with all of its quality and standards conditions, whether or not specific conditions of registration are in place, it will not automatically regain its TEF rating. Instead, a new TEF rating will only be granted following a TEF assessment during the next TEF application window.

109. There are a full and wide range of regulatory responses that are available to the OfS in the event that any ongoing registration condition is breached. As set out above, it will always be appropriate to remove TEF eligibility (alongside any other regulatory action the OfS consider proportionate) when the Quality and Standards Conditions have been breached.

110. It is also likely that it will be appropriate to remove TEF eligibility (and any current TEF rating) in the event that a provider's registration has been suspended for a breach of any of a provider's ongoing registration conditions. Suspending a provider's registration is a serious regulatory step for the OfS to take – and will only be taken where the OfS has assured itself that it is highly likely that a registration condition has been breached by a provider. Under such circumstances the OfS will consider whether or not it would be appropriate for a

provider to retain its TEF eligibility. In addition, any provider that is deregistered by the OfS as a result of regulatory intervention will have its TEF award revoked.

### **Ensuring that a student's qualification holds its value over time**

111. HERA says that the standards that the OfS uses when imposing registration conditions, or when assessing the extent to which a provider meets these, must be sector-recognised standards. This duty to assess threshold standards ensures that all registered providers are consistently making awards to students that meet UK expectations and that such awards are reliable over time and across different providers.

112. However, there is no sector-wide agreement about the standard of student achievement necessary to achieve a particular classification of award above the threshold.

113. This presents a number of challenges:

- students are likely to be very concerned about the standard of their qualification and the reliability of standards above the threshold
- employers rely on the classification of awards as they make recruitment decisions
- the reputation of the sector is closely tied to the credibility of the qualifications it awards, and how it determines the classifications of its degree awards
- there is routinely negative press coverage about 'grade inflation' in undergraduate degrees

114. This final point is of particular concern because it is not possible for the sector to provide counter evidence against charges of grade inflation in the absence of sector-recognised standards for the classification of degrees. This presents a risk to the reputation of the entire UK higher education sector, damaging our educational exports and productivity. Neither is the sector helped by the fact that the evidence for grade inflation is complex. In some cases, an increase in the number of 'good' degrees is a reasonable outcome of a previous increase in student prior attainment. In other cases, the reasons for an increase in 'good' degrees cannot be easily explained. Some action has already been taken to try to explore and address this issue – for example the work overseen by the UK Standing Committee for Quality Assessment to evaluate the range of degree classification algorithms currently in use in individual institutions; and the work undertaken to improve the capability of the external examining system.

115. But these measures alone do not sufficiently address the issue. The OfS is ideally positioned to assess the evidence and to take steps to encourage the sector to take action in this area. As a first step, the OfS will, as a matter of

routine, undertake an annual analysis of degree classification trends at the sector and provider level – and will make public its findings and conclusions, and will identify as part of that exercise any case where the pattern of classifications over time may suggest good or poor practice. The OfS will use its routine monitoring activity in relation to Conditions B3 and C1 and C2 to identify any provider in which there is an unexplained upwards trend in degree classifications, and will challenge providers to explain data that suggests students' degree classifications are being inflated.

116. But it should not fall to the OfS alone to solve the issue of grade inflation – the sector itself has a clear responsibility to take ownership of this issue, including driving work forward over the next 12 months to define and agree new minimum standards for all classifications of degrees and thus ensure providers are accountable for ensuring that students' hard won qualifications hold their value. To be clear, this is not about setting standards that would deliver precise comparability across all institutions, but about agreeing minimum baselines above which providers could choose to set their classifications.

117. This would ensure sector recognised standards above the threshold will be in place for the 2019/20 academic year when the OfS Regulatory Framework is fully in force, enabling the OfS to take firm and effective action to tackle degree inflation, where this is occurring.



## Financial Viability and Sustainability (Condition D)

- Condition D: The provider must be financially viable and financially sustainable and must have appropriate resources to provide and fully deliver the higher education courses as advertised (thus enabling students to complete their courses), and enable the provider to continue to comply with all conditions of its registration.

### Summary:

- Applies to: Approved and Approved (fee cap) categories
- Initial or general ongoing condition: initial and ongoing
- Legal basis: Not directly referred to within legislation (not mandatory)

### Legal basis:

118. There is no express statutory reference to a financial viability and sustainability condition for individual providers, but section 13 of HERA permits the OfS to create initial and ongoing registration conditions, which are not specified as conditions in HERA.

119. It is our intention for the information submitted to demonstrate compliance with the ongoing registration conditions (i.e. financial statements and forecasts), to also be used for the purposes of the OfS's separate obligation to monitor and report on financial sustainability under section 68 of HERA. This should enable the OfS to reduce burdens on providers by not requiring separate returns. Please see the main consultation document for more detail.

### Definitions:

120. The OfS will take "financially viable" to mean the provider being capable of continuing to operate for the foreseeable future<sup>4</sup> thus giving reasonable confidence that enrolled students will be able to complete their studies, as indicated by the provider:

- having appropriate financial resources and financial facilities to provide higher education in accordance with the conditions of its registration, and
- having adequate cash flow to meet its financial obligations and remain solvent (enough liquidity to pay debts when they are due), and

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<sup>4</sup> Usually three years.

- not being unable to pay their debts as defined in section 123 of the Insolvency Act 1986

or:

- having a parental or other legally binding deed of undertaking (including evidence that the guarantor can fulfil the guarantee), which must cover sufficient resources and cash flow to provide higher education in accordance with the conditions of the provider’s registration

121. “Financially sustainable” will be taken to mean the provider being financially secure over the longer-term (normally between three and five years) as indicated by the provider:

- generating sufficient profit or surplus;
- having appropriate resources to ensure appropriate investment in its staff; estate and physical and virtual infrastructure to ensure a high quality learning experience;
- having a buffer against unexpected financial challenges; this may include having sufficient reserves to support its business plan, any growth plans and sufficient cash-backed reserves to support students to complete their courses; and
- having an adequate balance sheet i.e. maintaining a net total assets position and not incurring deficits if these would result in a net total liabilities position.

or:

- having a parental or other legally binding deed of undertaking (including evidence that the guarantor can fulfil the guarantee), which must cover sufficient resources to ensure appropriate investment in its staff, estate and physical and virtual infrastructure to ensure a high quality learning experience.

122. For the purposes of this condition, the OfS will take “appropriate resources” to mean sufficient resources of a type necessary or desirable (including but not limited to fixed and moveable assets, rights, licences, consents and facilities) to provide higher education courses in full and as advertised, and in line with any business and/or strategic plans, allowing some flexibility to cope with unexpected financial challenges.

123. In assessing whether or not a provider’s resources are appropriate, the OfS will consider the provider’s size, business plans, ownership structure, past financial record (where a provider, its directors or its owner has been operating previously), complexity of any corporate structures, position in the market, likely ability to recruit students, and any expansion plans or other plans that will have a

financial impact. For instance, if the provider has plans for a significant expansion in student numbers, or is intending to apply for degree awarding powers, the OfS will take into account whether the provider's resources are appropriate in light of those plans.

124. Although sustainability is a longer-term measure, the OfS will seek to assess this over a three to five year forecast to understand what the provider's strategy and approach to financial management indicates about its longer-term sustainability.

**Legally binding parental or other legally binding deed of undertaking:**

Where a provider seeks to rely on any such guarantees to satisfy this condition, the guarantee must be:

- directly enforceable by the OfS in the jurisdiction of England and Wales
- governed by the laws of England and Wales

Additionally, the guarantor must be a parent undertaking of the provider or other separate legal entity. The guarantor must provide evidence that it is able to fulfil the terms of the guarantee at the time of giving the guarantee and on an ongoing basis to ensure that the provider has appropriate resources.

**Guidance:**

Initial condition

125. Providers must demonstrate that they are financially viable and sustainable, including having appropriate resources, in order to give certainty that they can fulfil their obligations to students, staff, taxpayers, and other stakeholders, and give certainty to the OfS that they comply with and will continue to be able to comply with registration conditions.

126. During registration the OfS will carry out a comprehensive assessment of a provider's financial performance and position, to inform the OfS's risk assessment under section 7 of HERA. This will enable the OfS to identify any particular pressure points and areas of risk and to ensure that the ongoing registration conditions that are applied to the provider on registration are proportionate to regulatory risk.

127. A provider can demonstrate compliance with the initial condition on financial viability and sustainability by submitting evidence of its past financial performance (where a provider has operated previously), as well as forecasts. The evidence<sup>5</sup> that the OfS would normally expect to see is:

- Full audited financial statements (for the last three years, where a provider has been in operation and providing higher education for this period, or, where a provider has been in operation for less than three years, for the period in which the provider has been in operation and providing higher education), comprising (per FRS102) statement of financial position, statement of comprehensive income, statement of changes in equity, statement of income and retained earnings, statement of cash flows and notes to the accounts. The auditor must be independent of the provider, and of the preparer of the accounts and the financial statements, and be listed on the Register of Statutory Auditors.
- Financial forecast tables, approved by the provider's governing body (including the current year budget and three to five year forecasts for financial and student number data, as well as underlying details of any growth or divestment plans, etc.).
- Commentary to support the financial forecast tables, to ensure that the OfS understands the provider's context and the assumptions underlying its forecasts.

128. Where relevant, the OfS will also seek information regarding:

- the provider's business plan (in particular where the provider is financially weak or new to the market, with no or only a short track record of operations and/or delivery of higher education), including robust and well evidenced forecasts and assumptions
- legally binding parental or other legally binding deed of undertaking, including evidence that the guarantor can fulfil the guarantee (if a provider is relying on such a guarantee to meet the condition) – this may include audited financial statements where the guarantor is a company or similar entity (see page above for what guarantees are acceptable)
- any other relevant supporting evidence, such as endorsement by the validating body for any student numbers forecasts

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<sup>5</sup> The OfS will respect commercial confidentiality, within the bounds of the requirements of the Freedom of Information Act 2000.

### General ongoing condition:

129. In order to determine whether or not a provider is complying with this condition on an ongoing basis, the OfS's judgement will be informed by the provider's behaviour, as well as the information submitted by the provider.

130. The following behaviours are examples of behaviours that indicate compliance with the general ongoing condition:

- forecasts (all providers) and business plans (if required), are credible, including underlying assumptions, and show how resources will be used
- the provider proactively notifies the OfS openly, transparently and in a timely way of any changes that materially impact on its financial viability or sustainability, in line with condition J1
- the provider has sufficient resources to provide higher education courses in full and as advertised, and in line with any business and/or strategic plans, allowing some flexibility for unexpected financial challenges
- the provider has adequate cash flow and liquidity to remain solvent and to pay its debts as they fall due

131. The following behaviours are examples of behaviours that indicate non-compliance with the condition:

- forecasts and/or business plans are not credible, and/or not based on accurate data and information
- the provider fails to update its forecasts and/or fails to notify the OfS of changes that impact its financial position (see condition J1)
- the provider's behaviour does not provide assurance about its viability or sustainability, as indicated by its three to five-year financial and student numbers forecasts (e.g. taking on unaffordable costs)
- the provider does not submit required information on a timely basis (see condition J1)

132. In order to demonstrate compliance with the general ongoing condition on financial viability and sustainability, providers that the OfS considers not to be posing specific risks in this area, and that are notified accordingly, will be required to report the minimum level of necessary information and data to the OfS on a regular basis. The minimum information required for this condition is:

- full, audited financial statements as per FRS102, to be submitted on an annual basis
- financial forecasts, to be submitted annually for most providers. The OfS may choose to vary the frequency, depending on provider size and/or risk, and in

line with condition I. We would in particular value views on the format in which financial forecasts should be submitted.

133. This information will be used to inform lead indicators, described in chapter 5 of the main consultation document.

134. In addition, under condition J1, a provider is required to inform the OfS of any changes that might affect its ability to comply with the general ongoing conditions, including this condition.

Monitoring, requests for additional information, and specific ongoing conditions:

135. If any of the lead indicators, or any other information available to the OfS trigger concerns that the provider's risk profile in this area has changed, and/or that the provider may be at increased risk of no longer fully complying with the condition, the OfS may request further information, and may revisit the initial, comprehensive assessment of the provider's financial viability and sustainability.

136. Providers that are considered at higher risk of breaching this condition on registration or as a result of monitoring may be subject to specific ongoing conditions that could be associated with additional reporting requirements to enable the OfS to monitor more closely and mitigate the provider-specific risks. The procedure for imposing such a condition after registration is set out in section 6 of HERA.

## Management and Governance (Conditions E1 and E2)

- Condition E1: The provider must have in place adequate and effective management and governance arrangements to provide and fully deliver the higher education courses advertised, and to continue to comply with all conditions of its registration.
- Condition E2: The provider must adhere to its governing documents, which must be consistent with the public interest principles that are applicable to the provider.

### Summary:

- Applies to: Approved and Approved (fee cap) categories
- Initial or general ongoing condition: initial and ongoing condition
- Legal basis: sections 13 and 14 of HERA (not mandatory)

### Legal basis:

137. This condition is the Public Interest Governance Condition, consistent with section 14 of HERA. It is designed to ensure that a provider is governed appropriately and is sufficiently well managed to enable it to deliver higher education courses in full and as advertised, and in accordance with the ongoing registration conditions to which the provider is subject. It will also give confidence in the provider's ability to continue to meet ongoing registration conditions, including providing (or making available) accurate and timely information to the OfS.

### Definitions:

138. The OfS will take "governing body" to have the meaning given in section 85 of HERA. Broadly, this will be any board of governors of the institution or any persons responsible for the management of the institution/company, or an equivalent controlling body, for example the board of a company, the trustees of a charity, etc.

139. In assessing whether arrangements are "adequate", the OfS will seek to determine if the procedures in place are designed appropriately, and in assessing whether the arrangements are "effective", it will consider whether these are operating properly.

140. For all providers in the Approved categories, the condition is underpinned by the standard list of public interest principles (see below). These are principles

with which a provider's governing documents must be consistent. There is an expanded list of public interest principles applicable to providers in receipt of grant funding. The OfS will also look to ensure these principles are complied with in practice.

### *Freedom of speech*

141. Freedom of speech is central to the success of the English higher education system. It promotes a culture where students learn the skills of critical thinking, challenge and debate about a variety of views. HERA extended the statutory duty to secure freedom of speech under the Education (No. 2) Act 1986 and there is much good practice across the sector. However, during the passage of HERA, the Government proposed additionally to consider how we do more in this area, in particular by consulting on a public interest principle. This is set out below at point II of the Standard List of Public Interest Principles and emphasises the importance of freedom of speech.

#### Initial condition:

142. In order to determine whether or not a provider meets the condition, the OfS will need to see that the provider's governing documents are consistent with the principles determined in accordance with section 14 of HERA that apply to the provider, and that the provider has adequate and effective arrangements and/or structures in place, and ensure that it complies with its governing documents.

143. As providers have different levels of complexity (including size, nature of the business and corporate form), different arrangements will be appropriate for each of them. For example, arrangements that may be appropriate for small providers might not be appropriate for large, complex providers, and/or those with University Title.

144. Providers will therefore need to demonstrate that their particular management and governance arrangements are appropriate for their size, complexity and risks, and meet the principles.

145. Where a provider follows a governance code that is consistent with all (or some) of the public interest principles then it may choose to use this as evidence of meeting (part of) the condition. It is the provider's responsibility to demonstrate how its chosen code is consistent with the public interest principles. Where the provider's chosen code does not meet all of the public interest principles, the provider will need to demonstrate separately to the OfS that it meets the remaining principles.



146. Alternatively, a provider may wish to sign up to the public interest principles directly and provide evidence of how it complies with these individually rather than with a broader governance code.

147. The OfS will seek to assure itself that procedures in place are designed appropriately and are operating properly. The evidence required for this purpose may vary from provider to provider. However, each provider is expected to submit a short self-assessment, describing the relevant provisions in the governing documents, the arrangements implementing the requirements and an explanation of their appropriateness. Each provider must also submit or make available a copy of its governing documents. Supporting evidence may include:

- details of ownership and control that demonstrate that the provider is owned and controlled by fit and proper persons
- details of corporate form and any group structures that demonstrate transparency of inter-relationships between companies / organisations
- membership and terms of reference of the governing body and any subcommittees, e.g. audit committee (where appropriate)
- evidence regarding risk management tools and processes (e.g. a risk register) (where appropriate)
- Audit Committee annual report (where appropriate)
- internal audit plan and annual report (where appropriate)
- recent effectiveness review report of the governing body and any subcommittees (where appropriate)
- information about governor (or equivalent) recruitment and induction (where appropriate)

148. The OfS may also carry out on-site reviews of the provider's management and governance arrangements, where appropriate.

General ongoing condition:

149. In order to determine whether or not a provider is complying with the Management and Governance condition on an ongoing basis, the OfS's judgement will be informed by the provider's behaviour, information submitted or made available by the provider, and any other information available to the OfS, such as whistleblowing / public interest disclosure reports submitted to the OfS.

150. The following behaviours are examples of behaviours that indicate compliance with the condition:

- the provider provides timely, accurate and complete information and data to the OfS, a designated body or other person nominated by the OfS, and to its students and other stakeholders
- the provider meets its obligations to the SLC to provide the information necessary for the SLC to administer student support in line with regulations made under s22 of the Teaching and Higher Education Act 1998. This information includes:
  - i. data related to the designated course(s);
  - ii. verification that the fee charged to the student, and the course quoted by the student in their application, are accurate and directly relate to the student's course of study;
  - iii. information related to student registration and attendance;
  - iv. confirmation of changes of any circumstances that affect a student's entitlement; and
  - v. timely reporting of when a student withdraws from their course.
- the provider follows and adheres to the principles and structures set out in its governing documents
- the provider regularly reviews the adequacy and effectiveness of its own governance arrangements
- the provider notifies the OfS of any changes to its governing documents that might affect the public interest principles, and submits the revised documents
- the provider gives timely notification to the OfS of relevant changes in governing documents, governance arrangements, control, ownership etc. in line with conditions J1 and J2
- the provider complies with other statutory duties
- in particular, in relation to the “Accountability” principle:
  - i. the provider responds to the OfS’s queries (in relation to any other ongoing baseline conditions) quickly, openly and transparently
  - ii. the provider ensures that the use to which they put funds received from the Student Loans Company is consistent with the purposes for which those funds were given
  - iii. the provider complies with conditions imposed on it by or under regulations made under s22 of Teaching and Higher Education Act 1998 (financial support for students)
  - iv. the provider takes responsibility for its own decision making, and does so in an open and accountable way
  - v. the provider regularly publishes clear information on steps it has taken to ensure value for money, including details about their use of resources and income. Providers should design this statement to allow students to see how their money is spent.
- In relation to the freedom of speech principle:

- i. the provider has set up a code of practice to ensure compliance with the statutory duty in section 43 of the Education (No.2) Act 1986 and compliance with any other applicable obligations in relation to freedom of speech
  - ii. the provider ensures that its governing documents consider its obligations in relation to freedom of speech, and do not contain any provisions which contradict these obligations
  - iii. the governing body abides by its governing documents in practice with respect to any issues around freedom of speech
- For providers in receipt of grant funding:
  - i. the provider complies with any terms and conditions attached to the funds received, and proactively provides the OfS with the information required for the OfS to assure itself that the provider is managing its affairs in line with the principles of regularity, propriety and value for money

151. Behaviours that indicate non-compliance include:

- the provider makes changes to its governing documents that affect the public interest principles without submitting an updated version to the OfS as soon as reasonably practicable following the change
- a provider does not follow its own governance procedures
- a provider does not engage with the OfS, obstructs the OfS regulatory activity, and/or does not notify the OfS of any reportable changes and/or does not submit the required information in relation to any condition
- a provider fails to comply with its other statutory obligations, as indicated by judicial proceedings and/or steps taken by other regulators
- the provider does not have sufficient management capacity and capability to ensure that it is able to continue to meet its ongoing registration conditions
- the provider fails to comply with other ongoing registration conditions due to failure in management and/or governance processes
- in particular, in relation to the “Accountability” principle:
  - i. the provider does not act openly, honestly, accountably and with integrity
  - ii. the provider misuses student support funding, for example through fraud, abuse of funds, financial mismanagement or irregularity
  - iii. the provider does not comply with conditions imposed on it by or under regulations made under s22 of the Teaching and Higher Education Act 1998 (financial support for students)
  - iv. the provider seeks to abdicate responsibility for decision-making, and seeks to rely on steers from the OfS

- v. the provider does not provide sufficient information on a regular basis to demonstrate it operates in an open and accountable way, and does not provide information on how it ensures value for money
- in relation to the freedom of speech principle:
  - i. the provider fails to include in its constitutional documents provisions and practices to protect freedom of speech
  - ii. the provider fails to abide by its own freedom of speech procedures.
  - iii. the provider does not take appropriate remedial action in response to being the subject of an adverse finding relating to its freedom of speech obligations. Appropriate remedial action could mean compliance with a court order (as determined by a court) or, where no court order is made, this could mean amending its governing documents to give greater consideration to freedom of speech and abiding by the documents in practice.
- for providers in receipt of grant funding:
  - i. the provider fails to comply with any terms and conditions attached to the funds received, and does not manage its affairs in line with the principles of regularity, propriety and value for money

152. In order to demonstrate compliance with the general ongoing condition, the OfS will require providers which it considers pose no specific risk in this area to submit or make available the minimum information required:

- the latest version of a provider's governing documents, reflecting any changes made.

153. For providers in receipt of grant funding, who are subject to additional public interest principles, as set out below, the OfS is likely to request additional information, such as:

- opinions by external auditors that the provider is using the funds for the purposes given
- annual value for money reports
- opinions from independent audit committee and/or internal audit on adequacy and effectiveness of arrangements for securing value for money

Monitoring, requests for additional information and specific ongoing conditions:

154. The OfS may carry out on-site reviews of the provider's management and governance arrangements where appropriate. The frequency of such reviews will be determined on a risk basis. The OfS may also request supporting evidence to inform its judgement on whether or not arrangements are working effectively,

such as evidence about risk management tools and processes (e.g. a risk register) or audit committee annual reports.

155. Providers that are considered at higher risk in this area on registration may be subject to additional reporting and/or monitoring requirements.
156. In addition, a provider is required to inform the OfS of any changes that might affect its ability to comply with ongoing registration conditions. Further information is provided in the guidance relating to condition J1.

[Consultation on the list of principles applicable to the governance of English higher education providers:](#)

157. Under section 14 of HERA the OfS must determine and publish a list of principles applicable to the governance of English higher education providers. These principles must be those that the OfS considers will help to ensure that these providers perform their functions in the public interest. The list may include different principles for different descriptions of providers. The list must contain a principle that relates to academic freedom consistent with section 14(7) of HERA.
158. The proposed lists of principles for the different description of providers are set out in Table B below. These are based on a variety of governance codes, as well as elements specifically applicable to higher education providers. These principles are deemed appropriate as they are those that will give the OfS confidence that a provider is sufficiently well governed to continue to meet its ongoing registration conditions, provide stability, deliver the courses students have signed up for, manage students' and taxpayers' money appropriately, demonstrate accountability and meet its commitments to other stakeholders.
159. The first principle, relating to academic freedom, is required by law and offers protections to academic staff to ensure they can freely put forward new ideas and challenge existing ideas without losing their jobs. This is an important, but also tried and tested concept, which has formed part of the regulatory landscape for a number of years.
160. The second principle is that of freedom of speech, which is a fundamental part of the academic experience that helps students to develop their own thoughts and to challenge others through debates and discourse. In a democratic country, we strongly believe it is in the public interest to encourage this.
161. As the providers in the Approved categories are in receipt of tax payer backed funds, either in the form of student support funding or grant funding, we believe it is in the public interest to ensure these providers have sound management and governance structures in place to enable them to manage their affairs in an open,

transparent and responsible manner. We believe the principles relating to risk management and accountability provide assurances about this to students, staff, and other stakeholders, while not imposing undue burdens on providers. The principles relating to the governing body and fit and proper persons are designed to ensure that at the highest level the provider is run in a capable and transparent way by responsible bodies and individuals. These principles follow well-established best-practice across various sectors and indeed the current higher education regulatory regime.

162. The list of principles applicable to providers in receipt of grant funding also reflects HM Treasury’s guidance on “Managing Public Money”, in relation to regularity, propriety and value for money. Given that these providers are directly in receipt of public funds it is in the public interest to have a certain level of independent membership of the governing body. However, the OfS will apply this principle in a proportionate way, to ensure it does not result in an unnecessary burden for small providers.

**Table B: proposed lists of Public Interest Principles for consultation**

<p><b>Standard List of Public Interest Principles:</b></p> <p>I. <b>Academic Freedom:</b> Academic staff at an English higher education provider have freedom within the law—</p> <p style="padding-left: 40px;">(a) to question and test received wisdom, and</p> <ul style="list-style-type: none"> <li>• (b) to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges they may have at the provider.</li> </ul> <p>II. <b>Freedom of Speech:</b> The governing body must take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured within its institution.</p> <p>III. <b>Accountability:</b> The governing body is responsible for operating openly, honestly, accountably and with integrity, and to demonstrate this must on a regular basis publish a statement on the steps it has taken to ensure value for money for students and (where a provider has access to student support or grant funding) taxpayers.</p>
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- IV. **Risk Management:** The governing body is responsible for comprehensive corporate risk management (including academic risk management) and control to ensure the sustainability of the provider's operations, and its ability to continue to comply with all its conditions of registration.
- V. **Governing Body:** The size, composition<sup>6</sup> and terms of office of the governing body should be commensurate with the nature, scale and complexity of the enterprise and skills should be balanced on the Board. This should be reviewed regularly to ensure the governing body remains appropriate for the provider.
- VI. **Academic Governance:** The governing body receives and tests assurance that academic governance is adequate and effective through explicit protocols with the Senate/Academic Board (or equivalent).
- VII. **Fit and Proper:** The Governing Body shall ensure transparency of the provider's corporate form and that its members and those in the senior management of the provider are fit and proper (see definition below). The Governing Body must provide information about those individuals and /or entities that are in the immediate or ultimate control or ownership to enable the OfS to ascertain that these are fit and proper.

For the purposes of principle VII, the following are indicators that a person may not be a "fit and proper" person. Where an item does apply, the provider must disclose this to the OfS and must show evidence that it has investigated the concern and considered the appropriateness of the individual's/company's involvement. The OfS will determine whether the matter a) is relevant to the individual's role at the provider, b) has been appropriately addressed by the provider and c) whether or not it affects the provider's application or status on the Register.

Indicators:

- disqualification from acting as a company director or from acting as a charity trustee, as per the Company Directors Disqualification Act 1986 or the Charities Act 2011
- conviction of a criminal offence anywhere in the world

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<sup>6</sup> Including diversity and the appropriateness of the skills.

- subject of any adverse finding in civil proceedings, where relevant, including, but not limited to bankruptcy or equivalent proceedings (in the last three years)
- subject of any adverse findings in any disciplinary proceedings by any regulatory authorities or professional bodies
- involvement in any abuse of the tax systems
- involvement with any entity that has been refused registration to carry out a trade or has had that registration terminated
- involvement in a business that has gone into insolvency, liquidation or administration while the person has been connected with that organisation or within one year of that connection
- investigation by a professional body, a court or tribunal, whether publicly or privately in which the concerns or issues under investigation were upheld
- dismissal from a position of trust or similar
- involvement with a higher education provider that has had its registration refused by the OfS or has had similar action taken against it by another regulator (this includes, but is not limited to, serving on a board/governing body, having voting rights, being a significant shareholder/owner, serving in a senior position, etc.)

**Public Interest Principles for DAPs holders:**

For providers with Degree Awarding Powers the applicable list of public interest principles will include an additional principle to ensure appropriate records are kept regarding Degree Awarding Powers, where no order exists.<sup>7</sup> This is to ensure transparency and support student choice.

- I. **Records:** Where Degree Awarding Powers are solely contained in the provider's governing documents, and no order either under section 76 of the Further and Higher Education Act 1992, or under the Higher Education and Research Act exists, the provisions setting out those powers are retained and may not be altered without the consent of the OfS.

**Public Interest Principles for providers in receipt of grant funding:**

Any providers that are in receipt of grant funding from the OfS and/or UKRI are required to comply with the following, additional principles. This is in recognition that such providers are handling public money, and are thus

<sup>7</sup> This is likely to primarily be applicable to providers that obtained their powers prior to 1992, and/or that are incorporated via Royal Charter or a Private Act.



required to have structures and measures in place to ensure there is appropriate accountability to Parliament for these funds. The principles are in line with those set out in HM Treasury's "Managing Public Money" and are designed to ensure sound and open decision-making, regularity, propriety and value for money.

For these providers, the following, additional principles will apply:

- I. **Independent members of the governing body:** There must be at least one external member of the governing body who is independent of the institution, and whose term of office is limited to a maximum of three terms of three years or two terms of four years. For providers with large governing bodies or more complex corporate forms, more independent members may be appropriate.
- II. **Regularity, Propriety and Value for Money:** The governing body is responsible for ensuring that there are adequate and effective arrangements in place to ensure public funds are managed appropriately, in line with the conditions of grant and the principles of regularity, propriety and value for money and to protect the interests of taxpayers and other stakeholders. This includes any funds passed to another entity for the provision of facilities or learning and teaching, or for research to be undertaken.

If a provider holds DAPs and receives grant funding, both the principles for DAPs holders (on Academic Governance and Records) and those for grant funded providers will apply.

For these purposes, the OfS will take regularity, propriety and value for money to mean:

- a. Regularity: compliance with the relevant legislation (including State Aid) and funds are used only for the purpose for which they are given, and in line with any conditions attached.
- b. Propriety: meeting high standards of public conduct, including the relevant parliamentary expectations, especially transparency.
- c. Value for money: meeting the need for efficiency, economy, effectiveness and prudence in the administration of public resources, to secure value for public money in relation to the public funding received.

For most providers<sup>8</sup> this includes having in place internal audit arrangements, such as an independent audit committee, to give views on how the provider is achieving value for money.

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<sup>8</sup> There may be other ways of evidencing compliance in this respect for very small providers, such as providing a report to the OfS.

## Senior staff pay transparency (Condition E3)

- Condition E3: The provider must provide to the OfS and publish in their annual financial statements information on the number of its staff members earning a basic salary of over £100,000 per annum. For staff earning a basic salary of over £150,000, this information must include details of total remuneration, and an explanation of how these remuneration packages were decided and justified.

### Summary:

- Applies to: Approved and Approved (fee cap) categories
- Initial or general ongoing condition: ongoing condition
- Legal basis: not mentioned within legislation (not mandatory)

### Legal basis:

163. Section 13 of HERA permits the OfS to create initial and ongoing registration conditions which are not specified as conditions in HERA.

### Guidance

#### General ongoing condition of registration:

164. The governing bodies of Approved and Approved (fee cap) providers must provide to the OfS and publish in their annual financial statements the number of staff paid more than £100,000 per annum. These numbers should be broken down into pay bands of £5,000.

165. The governing bodies of Approved and Approved (fee cap) providers must also provide to the OfS and publish in their annual financial statements information in relation to the following:

- a. The role descriptions of staff paid more than £150,000 per annum.
- b. Full details of the remuneration packages of those staff, including bonuses, pension contributions and other taxable benefits.
- c. Details of the process that resulted in the decision to award these employees' remuneration packages with a focus on transparency. The OfS will be taking further action to highlight good practice in this area to complement pre-existing guidance produced by the Committee of University Chairs (CUC).
- d. Information on the justification for awarding these remuneration packages with reference to staff performance against outcome measures.

166. There may be circumstances in which the OfS, at its discretion, will decide not to apply the condition in relation to a particular provider. This may be done, for example, where an individual's remuneration package reflects their broader role within a provider whose core function extends beyond higher education.

Monitoring, requests for additional information and specific ongoing conditions of registration:

167. Providers will demonstrate compliance with this condition by providing the information as described above.

168. If a provider fails to meet this condition of registration to the satisfaction of the OfS, the OfS can, at its discretion, request further information from the provider and make this publicly available.

169. If this additional information is not forthcoming or is deemed unsatisfactory to meet the condition by the OfS, the OfS will be able to use its powers to sanction the provider. This could include imposing monetary penalties, or in extreme cases suspension from the register and deregistration.

## Student Contracts (Condition E4)

- Condition E4: Providers must demonstrate in developing their policies and procedures governing their contractual and other relationships with students that they have given due regard to relevant guidance as to how to comply with consumer law.

*The OfS recommends that providers consult the CMA's published guidance for higher education providers. Providers can ensure compliance with the law by seeking independent legal advice. If there is a change in the recommended guidance in future years, the OfS will inform providers in writing.*

### Summary:

- Applies to: Approved, Approved (fee cap) categories
- Initial or general ongoing condition: initial and ongoing condition
- Legal basis: Not specifically referred to in legislation (not mandatory)

### Legal basis:

170. There is no reference within legislation. Section 13 of HERA 2017 permits the OfS to create initial and ongoing registration conditions which are not specified as conditions in HERA.

### Guidance

171. It is important that students know their rights, are given access to good information, and have fair contracts that enable them to take action if the reality of their experience does not match what was advertised. Students' rights as consumers are an important way to increase their ability to receive value for money.

172. The objective of this registration condition is to press providers to take appropriate steps to comply with consumer law in a way that is consistent across the sector, particularly in relation to: good and accurate provision of information, which is quantifiable, timely, accessible and enforceable; fair and transparent terms and conditions of contracts; and clear, accessible and fair complaint handling practices.

173. The condition requires providers to demonstrate that, in developing the policies and procedures governing their contractual and other relationships with students, they have given due regard to relevant guidance about how to comply with consumer law. The CMA's published guidance for higher education providers is currently recommended by the OfS.

## CMA guidance

174. The Competition and Markets Authority has published its guidance 'Higher education: consumer law advice for providers'. This sets out the CMA's view of what providers should do to ensure they comply with their obligations under consumer law. It focuses on three aspects of students' rights as consumers:

- students should have access to clear, accurate, specific and timely information at all stages of their higher education experience. This includes ensuring students have access to specific information on course content and structure and total course costs. This is crucial for students who can use it to make informed decisions about their higher education experience
- students should also know what terms make up their contracts with providers and these should be understandable, fair and transparent, and not unfairly balanced towards the provider
- if things do go wrong, students should be able to access their university's complaint handling processes and practices, which should be clear and fair

175. In particular, in relation to the form and content of contractual terms between students and providers, the CMA advises this is likely to include (among other things) information on the composition of the course and how the course will be delivered, and the balance between the various elements, such as the number and type of contact hours that students can expect. Including this type of information in the contract does not rule out by itself scope for fair variation to be made to the course, subject to fair contractual provision being made to allow for such change, for example in response to student feedback.

176. In relation to complaint handling, it is important that those processes should contain accurate information about the higher education student complaints scheme operated by the OIA. Students at registered providers may have recourse to the OIA Scheme for free, independent redress of their unresolved complaints once they have exhausted internal complaints procedures at their provider.

## Compliance with the law

177. Providers already have an obligation to ensure they are complying with consumer law. Any judgement the OfS makes as to whether providers have met this condition is not a judgment as to whether providers are complying with consumer law and should not be seen as such. Any guidance on compliance with consumer law should be seen as advisory only, and, as the CMA makes clear, its guidance is its view of the law. Therefore, providers should consider seeking their own legal advice to ensure compliance with the law.

## Ongoing work on students' contracts and consumer rights

178. In addition to this registration condition, the OfS will seek to take further action to address student value for money concerns relating to their higher education experience. This could include further consultation on students' contracts and student consumer rights, for example whether the OfS should play an enforcement role, and whether students would benefit from the use of sector wide models for contracts with providers.

### Initial condition of registration:

179. In order to determine whether or not the provider meets the condition, the provider must demonstrate that, in developing its policies and procedures governing its contractual and other relationships with students, it has given due regard to relevant guidance about how to comply with consumer law.

180. The provider is expected to submit a short self-assessment, describing how, in developing its policies and procedures governing their contractual and other relationships with prospective students (and relationships once those students have become current students), it has given due regard to relevant guidance about how to comply with consumer law.

181. Where the provider has sourced guidance other than CMA's, the provider should be able to demonstrate its appropriateness.

182. The provider may find it helpful to take account of the compliance checklists at Annex A of the CMA's guidance (p. 55 – 59) when submitting their self-assessment. These are also set out in table C:

*Table C: Annex A from CMA advice on consumer protection law for higher education providers*

#### **Checklist summaries of Chapters 4, 5 and 6**

##### **1. Compliance checklist summary: your information provision**

###### ***Research and application stage***

You should ensure that:

- a) You provide prospective students with 'material information' – including about the courses you offer, the structure of those courses, and the relevant fees/costs – before they make a decision about which courses and providers to apply to.
- b) This information is accurate, clear, unambiguous, and is given up front. (This includes information given verbally, visually, and in writing.)
- c) The information is easily accessible, for example, via your website, prospectuses, course and departmental handbooks, and at open days.
- d) You draw prospective students' attention to important and surprising rules and regulations, and make them accessible.

- e) You do not omit important information that could affect students' decisions about their choices and bear in mind particularly important information for certain groups of prospective students, for example part-time or international students.

You should also note that:

- f) Where you publish materials (such as prospectuses or information on your websites) which provide sufficient information about the courses being offered and the costs for the prospective student to make a decision about applying, this will be an 'invitation to purchase' under the CPRs. In each invitation to purchase, you should ensure you are providing all the necessary 'material information', for example the main characteristics of the course, the total tuition fees and other costs, in a comprehensive way.
- g) Although 'material information' required under the CPRs is broader in scope than the pre-contract information required under the CCRs, there is a significant overlap. Where you are giving information that is in fact 'pre-contract information' under the CCRs, you should be careful that the information is accurate because the pre-contract information will be binding.

### **The offer stage**

The CPRs and the CCRs both apply at the offer stage. When an offer is accepted, the HE provider and prospective student enter into a contract. This is likely to be a 'distance contract' under the CCRs where offer and acceptance take place at a distance (for example, via the UCAS system). To comply with both pieces of legislation you should ensure that:

- h) You continue to provide important information to prospective students to inform their decision on which offer(s) to accept. (This obligation continues throughout your dealings with prospective students and, in particular, where any important information from your prospectus or other course promotional materials has changed this should be brought to students' attention.)
- i) You draw prospective students' attention to your full contractual terms and conditions, that these are easily accessible, and that you highlight particularly surprising or important terms.
- j) You provide prospective students with the necessary pre-contract information required under the CCRs at the latest before they accept an offer of a place on a course. For example, this would include the requirements of the offer, the main characteristics of the course, the duration of the course, and the total price and other relevant costs (or how these will be calculated).
- k) Where any pre-contract information (as defined in the CCRs) that you have already provided changes, you have obtained the student's express agreement to the change before or at the time of making the offer.
- l) Where you anticipate that some things might change after the offer is accepted, you make clear in the pre-contract information what could change, when, and how, so that the student can agree to this.
- m) Any terms in the contract that purport to allow changes to the pre-contract information are fair under unfair terms legislation.
- n) You provide prospective students with a notice of their 14-day right to cancel, where the application and offer is carried out at a distance.
- o) Once an offer is accepted, you provide confirmation of the contract on a durable medium, for example as attachments to an email. The confirmation must include all pre-contract information, unless it has already been provided on a durable medium.

### **Enrolment stage**

When prospective students enrol ensure that you have provided them with the information required under the CPRs and CCRs. You should ensure that:

- p) You check the pre-contract information you gave to prospective students at the offer stage or before is still accurate on enrolment.



- q) In any event, where any changes have been made to material information, you inform students about these at the earliest opportunity because failure to do so may be misleading omission under the CPRs.
- r) Where a separate contract for educational services is entered into on enrolment, and enrolment takes place on campus, you comply with the CCRs requirements for 'on-premises' contracts. (This requires certain information to be provided if it is not already apparent in the context, for example the HE provider's identity is likely to be apparent if the enrolment takes place at the main campus.)
- s) Where a separate contract for educational services is entered into on enrolment, and enrolment takes place at a distance, you comply with the CCRs requirements for 'distance' contracts, including in relation to the student's right to cancel.
- t) You draw students' attention to your terms and conditions, and any other rules and regulations, and make them accessible. You should highlight important and surprising terms and provisions to students.

## **2. Compliance checklist summary: your contract terms and conditions**

You should ensure that:

- a) Your terms (which are likely to include your rules and regulations and other applicable documentation that contains rules that apply to students) can be easily accessed, for example on your website, and are available to students.
- b) Students are aware of your terms and that you give them the opportunity to review them before they accept an offer.
- c) Your terms are written in plain and intelligible language and are clear and transparent so that students understand them, how they affect their rights and obligations, and how the terms could impact them.
- d) You highlight any important or surprising terms and draw them to students' attention before they accept an offer, so that their significance is not missed. For example, a term that sets out how tuition fees may change over the duration of the course should be brought to students' attention up front.
- e) Your terms are not drafted in such a way that their effect could be unfair. They should strike a fair balance between your rights and obligations and those of students. For example, the following types of term applied in a blanket way may be open to challenge:
  - (i) terms allowing an HE provider an unreasonably wide discretion to vary course content and structure or increase fees during the duration of the course;
  - (ii) terms seeking to limit an HE provider's liability for non-performance or substandard performance of the educational service;
  - (iii) terms that give HE providers a blanket assignment, or a blanket right to receive an assignment, of intellectual property rights from students to the provider; and
  - (iv) terms allowing an HE provider to impose academic sanctions against students for non-payment of non-tuition fee debts.

## **3. Compliance checklist summary: your complaint handling processes and practices**

You should ensure that:

- a) Your complaints procedure is easily located and accessible to students, for example on your website and intranet.
- b) You provide prospective students with information about your complaints process(es) before they accept an offer of a course (this includes procedures relating to applicants and current students if they are separate).
- c) You provide students with clear and accurate information about your complaint handling procedures, in writing and (where applicable) verbally, for example:

- a. where you offer a course in partnership with, or sponsored or awarded by, another HE provider it should be clear where responsibility for complaint handling lies;
  - b. you should provide accurate details of any external complaint or redress scheme<sup>9</sup> that students can access; and
  - c. where students raise concerns at an informal level, you should inform them that they can make a complaint under your formal complaints process if the matter is not satisfactorily resolved.
- d) Ensure that your complaints handling processes are fair. This is more likely to be achieved where you:
- a. set out clear and reasonable timescales in which students can expect to hear back about their complaint at each stage of the process, as applicable;
  - b. set out clear and reasonable timescales relating to how long students will be given to respond to any requests for further information that you may make;
  - c. do not create unreasonable barriers for students pursuing a complaint; and
  - d. provide the ability for students to escalate the matter if they are unhappy and, where the regulatory framework allows it, ultimately to appeal if the matter is not satisfactorily resolved.
- e) Follow any guidelines published by any third party redress or complaint schemes<sup>10</sup> of which you are a member.
- f) Ensure that your staff are trained in and follow your complaint handling procedures in practice.

183. In terms of the initial students' contracts and consumer rights registration condition, the OfS will look at steps taken by providers in relation to prospective students i.e. it will look at policies and procedures governing contractual and other relationships with students who are commencing their studies from the academic year 2019/20, ensuring the policies and procedures are sound to govern the contractual and other relationships with those students once they have become current students.

184. The provider's self-assessment should be accompanied by supporting evidence, demonstrating how it meets the condition. Supporting evidence that a provider could submit to the OfS may include:

- information on organisational and staffing arrangements i.e. if there is a department and / or designated staff member responsible for consumer law issues
- copies of policies relating to where information is held for staff and students, examples of this, and how this is provided to students. Examples of where information is kept could be provided as evidence, e.g. hyperlinks in the provider's main submission
- information on what policies and procedures are in place to ensure that students have contracts with fair and transparent terms and conditions

<sup>9</sup> For example, the OIA in England.

<sup>10</sup> <sup>10</sup> For example, the OIA in England.

- copies of information on any policies and procedures relating to consumer law obligations, for example those addressed in the CMA guidance, such as information management and provision, complaints handling and setting terms and conditions and/or contracts
  - i. Demonstrations of these policies and procedures could be further supported by copies or examples of any model documents referenced in policies and procedures, e.g. contracts, offer letters, website or intranet templates (e.g. for course descriptions), terms and conditions
- any guidance or information regarding training for staff relating to consumer law obligations
- relevant correspondence, meeting minutes or staff communications
- any relevant supporting documentation the provider may have already prepared for other purposes, e.g. information showing awareness of the OIA's Good Practice Framework
- information on any working groups or committees established to tackle issues relating to consumer law such as information management and provision, complaints handling and setting terms and conditions and/or contracts
- details of former or planned reviews into information management and provision, complaints handling and setting terms and conditions and/or contracts
- evidence that independent legal advice has been sought

General ongoing condition of registration:

185. In order to determine whether or not a provider is complying with the students' contracts and consumer rights registration condition on an ongoing basis, the OfS's judgement will be informed by the provider's behaviour, information submitted by the provider, and any other information available to the OfS, such as whistleblowing / public interest disclosure reports submitted to OfS, or information from other relevant bodies, such as OIA, CMA or Trading Standards.

186. Providers are expected to ensure their short self-assessment remains up to date. For example, following on from the initial condition of registration, this should also contain information describing how they have given due regard to relevant guidance and advice as to how to comply with consumer law, in developing their policies and procedures governing their contractual and other relationships with both current and prospective students, i.e. for those already studying that year, as well as for future students.

187. The following behaviours are examples of behaviours that indicate compliance with the condition:

- a provider responds to the OfS's queries in relation to the condition quickly, openly and transparently
- a provider regularly reviews the adequacy and effectiveness of its policies and procedures relating to the provision of information; terms and condition; and complaints handling
- a provider submits updates as soon as reasonably practicable to the OfS when changes are made which affect the veracity of the original submission to OfS

188. Behaviours that indicate non-compliance with the condition include:

- the OfS becomes aware of provider level issues relating to information provision; terms and contracts; and complaints handling e.g. through third parties such as CMA, OIA, Trading Standards, students or their representative bodies
- a provider does not follow the procedures set out in its original submission
- a provider does not engage with the OfS, and does not notify the OfS of any reportable changes and/or does not submit the required information in relation to any condition
- a provider fails to comply with relevant statutory obligations, as indicated by judicial proceedings and/or steps taken by other regulators, or third parties such as Trading Standards, OIA, CMA, students or their representative bodies
- a provider does not have sufficient management capacity and capability to ensure that it is able to continue to meet its ongoing registration condition

[Monitoring, requests for additional information and specific ongoing conditions of registration:](#)

189. Where there are risks of the condition being breached, the OfS may take steps to support compliance with the condition, whether through enhanced monitoring or specific conditions. These might for example require the nominated accountable officer to oversee a particular course of action designed to ensure that appropriate policies and procedures are being put in place to meet the condition.

## Student Protection Plans (Condition F)

- Condition F: The provider must have in force a student protection plan which has been approved by the OfS (which sets out what actions they will take to minimise any impact on the students' continuation of study should the provider discontinue the course, subject, discipline or exit the market completely) and the provider commits to taking all reasonable steps to comply with the provisions of that plan

### Summary:

- Applies to: Approved and Approved (fee cap) categories
- Initial or general ongoing condition: initial and ongoing condition
- Legal basis: section 13(1) (c) and (4) HERA (not mandatory)

### Legal basis:

190. As set out in section 13(4) of HERA, student protection plans are plans that are to deal with events specified by the OfS. The proposed triggers are set out below. Plans must be approved by the OfS, published, and reviewed regularly.

191. The plans will be able to support continuity of study through adequate, appropriate and consistent protection for students. Key measures of whether a plan is effective will be whether it is transparent, clear, fair and explicitly made known to students. These principles are discussed in more detail below.

### Definitions:

192. The OfS will take “student protection plan” to mean a document which sets out what actions the provider will take to minimise any impact on the continuity of study of their students. It will also include examples of what events may trigger the plan, such as the closure of a course, campus or location, the discontinuation of a discipline or market exit. This document must be approved by the OfS, and readily available to current and potential students.

193. The OfS will take “exit the market” or “market exit” to mean a provider leaving the sector and ceasing to deliver higher education courses. A provider might exit the market deliberately (e.g. for strategic reasons) or for other reasons (e.g. suspension from the register or de-registration, or financial failure). It is not envisaged however that plans can be triggered only by market exit, and plans, or elements of them, may also be brought into play due to other events such as campus or location closure.

## Guidance

### Initial condition:

194. All providers in the Approved categories will be required to put in place a student protection plan (SPP).
195. This SPP must meet minimum requirements set by the OfS. An example template is included below.
196. It must cover the events that would trigger the implementation of the SPP, i.e. instances where continuity of study is put at risk through no fault of the students. These may include:
- course, department, location or campus closure
  - the discontinuation of a subject or discipline
  - deregistration or suspension of registration (where suspensions puts continuity of study at risk) or loss of Degree Awarding Powers
  - a provider exiting the market completely (intentionally or otherwise)
  - a provider exiting a particular section of the market, such as part time or distance learning
  - any other changes which may affect students' ability to continue their studies, such as loss of Tier 4 licence
197. The SPP must contain a description of the measures in place to protect the interests of students and mitigate the risks relating to their ability to continue and complete their studies.
198. As part of the initial registration process, the OfS will undertake a risk assessment based on the degree to which a provider meets each of the various conditions of registration and the probability and potential impact of the risk of the provider being unable to continue to meet each of the ongoing conditions. The content of each SPP will be determined by the particular risk profile of the provider. It will be expected to address the specific risks of that provider, in a robust and proportionate manner.

### General principles

199. SPPs should be developed by the provider according to the following set of core principles, which will also be taken into consideration by the OfS when assessing the provider's plan:

## **Transparency**

- SPPs should be publicly and readily available, especially to all current and prospective students at a registered provider (on their main website for example), and in a format that is clear and easily understandable
- SPPs will form part of the data and information available to prospective students when making their decision to register at a particular provider, and should be created with this purpose in mind
- the plan should state, in a clear and concise way, what risks to continuity of study exist and how these will be addressed should they materialise
- the provider should provide clear and accessible information on what options are in place should a course, campus or provider close, what the triggers of an SPP are and what steps they will take to minimise disruption
- providers should also commit to informing students of any emerging risks to the continuity of their studies in a timely and transparent manner, and to working with them on any possible changes to course content or delivery which might cause such risks. Conversely, it should be clear to students in what circumstances SPPs will not apply, or what they cannot cover. Year by year changes to programme or module content, which do not have an impact on the student's ability to complete their studies, would not normally be covered by student protection plans

## **Clarity**

- SPPs must be clearly defined, so that their core purpose and what is being protected (and what is not being protected) is understood by providers and students alike. A core principle is that students need to have confidence that, when they begin a course of study, they have a reasonable expectation of being able to complete it at the provider or a substitute provider
- students need to have clarity over what the potential triggers of an SPP are (e.g. course, departmental or institutional closure) and what their options will be (teach out, transfer or, where necessary, financial compensation)

## **Fairness**

- SPPs must aim to provide solutions which are fair and reasonable for the student
- proposed actions should take into account the diversity of students and their needs, including for example considerations of mobility, special educational needs, parity of course content or any unintended financial consequences
- in most cases, we expect the student would be assisted to continue their studies, either through being taught out at their existing provider, or through transferring to another provider. If, for any reason, a student could not transfer

to another provider (for example due to mobility issues), what happens will depend on the facts of the particular case or the circumstances. We expect providers to make appropriate provision to cover such circumstances<sup>11</sup>

- measures within the SPP must also consider existing legislation and regulation. For example, if a provider has its Tier 4 licence revoked, any measures brought into play must not cut across existing regulations applicable to students on Tier 4 visas. The provider should however, adhere to the student protection principles described here, particularly around transparency, fairness and support, ensuring that any impact on student's studies is communicated to them in a timely manner

### **Advice and support to students**

- the provider makes a commitment to offer advice and support regarding any proposed changes, the triggering of student protection plans or the measures within them

### **SPPs as a living document**

- SPPs should be iterative, and where possible, created in collaboration with students to ensure their views, interests and are taken into account
- they should be revised regularly to ensure mitigating measures are practicable, relevant and effective year on year
- plans must be up to date and reflect any changes or events which may require a change to the plan or the actions within it

200. To enable the OfS to assess the feasibility of the plan, it may ask providers for underlying evidence. For example, if the SPP states that there is an arrangement to allow students to transfer to another provider, the OfS would need to see some evidence that the other provider has indeed agreed to this.

201. Where the provider is a Further Education College, registered in the Approved categories, SPPs will still be a requirement, but providers will need to take into consideration and if necessary align their SPPs with other student protection measures that apply in the FE sector, such as Special Administration Regimes.

#### *Risk-based approach*

202. SPPs must be unique to each provider, reflect the specific types and level of risk they face and include actions appropriate to those risks.

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<sup>11</sup> Any protection provided by the student protection plan will not displace any additional rights that students may have under consumer law (e.g. under the Consumer Rights Act 2015 or the Consumer Protection Regulations 2008).



203. Providers with a low risk of unplanned closure would only be required to have a light-touch plan, including minimum measures such as provision to teach out students, or arrange transfers to other providers (see template below). More specific and tangible measures will be required where a provider is judged by the OfS to be at greater risk, e.g. of failing to deliver a course or of ceasing to be a registered higher education provider.

204. Plans could include a wide range of measures, including, but not limited to commitments to:

- work with students on any planned closures, significant changes or other events which will affect students (as discussed in ‘triggers’ above)
- provide sufficient notice period on such closures/significant changes once decided
- provide clear and timely information
- teach out all student cohorts if it decides for strategic reasons to voluntarily discontinue a course or discipline
- make arrangements for existing students to be provided with suitable alternatives if a course or discipline can no longer be offered
- make every effort to support the student in finding a course at another provider
- have a clear policy for refunding all or part of paid fees and recording the amount of credit/academic progress achieved if transfer to another course/institution is not possible

205. Any measures must be feasible and practicable, and be backed up by clear implementation plans.

206. When agreeing SPPs with the OfS the provider may be expected to provide some sort of reassurance on the financial position, which may include additional measures such as financial guarantees, or escrow type arrangements where a higher risk of market exit specifically is identified.

207. A template/example SPP (see below) is included as part of the guidance.

General ongoing condition:

208. Providers must ensure their SPP remains appropriate and feasible. Providers will have a duty to inform the OfS of any events or changes to circumstances which may affect their financial sustainability and viability, or otherwise impact their ability to deliver course content. Where necessary the OfS can request amendments to the provider’s SPP.

209. In assessing continuing compliance with the condition, the OfS will consider any updated SPPs, as well as behaviours, outlined below.

210. The particular risks for each provider will be assessed by the OfS and reassessment of those risks may be prompted by a reportable event or the triggering of a lead indicator.

211. The outcome of the OfS's risk assessment will drive:

- application of any specific ongoing conditions, including additional requirements the OfS will expect to be included in the provider's SPP, dependent on type and level of risk
- scope and frequency of review of the SPP

212. Any requirement for providers to review / update their SPP would be a function of the OfS's ongoing assessment of a provider's risk so that if the risk changes, or new risks emerge, this would impact on whether any specific ongoing conditions applied to the SPP might be removed or added.

#### Monitoring, requests for additional information and specific ongoing conditions:

213. The OfS would expect providers to notify it of relevant changes that could impact the SPP. The OfS could exercise its powers to impose enhanced monitoring, or to require more frequent or detailed information to ensure the SPP remains effective in mitigating risks to students. The OfS may seek assurance that the SPP's provisions are sufficient to mitigate risks identified, or impose further specific ongoing conditions, for example in response to an increase in a provider's exposure to risk.

#### *Behaviours*

214. In considering the effectiveness of a provider's plans, the OfS will also take into account compliant and non-compliant provider behaviour. Behaviours that indicate compliance include:

- providers make clear commitments, via their SPP, to current and potential students regarding student protection, including what protective measures are in place, how they will be triggered and what students can expect in terms of communication, notice and involvement on any changes which may affect them
- providers publish their SPP, making it available to current and potential students
- providers are proactive in keeping the OfS updated on any changes that might affect the validity and feasibility of the SPP and the measures within it

- providers are proactive in updating and re-submitting the SPP to reflect those changes
- providers take steps to ensure the measures in the SPP are fair and viable, and take into consideration the potential impact on all students, including, for example, those with special educational needs
- providers work with students and take their views into consideration when creating and refining their student protection measures

215. Behaviours that indicate non-compliance include:

- providers fail to publish or are not meeting the obligations set out in their SPP
- providers fail to submit updated SPPs to the OfS
- providers do not regularly review their SPPs and fail to update them to take account of changes in their circumstances
- providers fail to engage with the OfS regarding the contents of and any updates to their SPPs
- providers' plans are not tested or fail to take into consideration parts of the student population
- providers fail to provide clear information about when and how SPPs may be triggered

## Student Protection Plan (template)

The following is intended as an indicative template only. The language and content will vary across different providers, and will be for providers themselves to define in agreement with the OfS.

[Name and address of provider, website]

[date of plan]

### 1. Introduction: What this Student Protection Plan is for

This Student Protection Plan sets out what measures we have in place to protect you as our students in the event that a risk to the continuation of their studies should arise. The type of event or changes, which might cause such a risk, are also detailed below.

This plan has been approved by our regulator, the Office for Students, and is available to all current and potential students.

The measures contained in this plan are in addition to the protections you have under consumer protection law, and do not impinge on your consumer rights.

### 2. Our commitments to you as a student

We commit to:

- being open and transparent with students should any risk to the continuity of your studies arise, and inform you in a timely manner
- taking reasonable steps to protecting your studies should we discontinue a course or discipline, close a location (building or campus) where a course is taught or close altogether
- considering students' views before deciding to implement any substantial changes to a course or discontinuing it, or stop teaching a discipline or closing a location
- taking into consideration the needs of all our students and the impact on them of any proposed changes and protective measures
- informing the OfS of any changes that may necessitate a review of the plan or any of the measures contained within it.

We will regularly seek students' views on this plan as part of our student feedback processes.

If you have any immediate views, concerns or feedback in relation to this plan, please contact [*provider to insert*]

### **3. Why is this plan necessary?**

In designing and seeking approval for this plan, we have worked with our regulator, the OfS, to ensure it addresses our specific circumstances

*[Provider to insert, for example, indicating the specific risks and, in clear and concise terms, how they are being addressed, e.g.: This is a highly specialised course and we are the only provider in the UK. As such, transferring to another institution is unlikely to be an option.]*

### **4. What type of events will prompt this student protection plan?**

This plan will be triggered if:

- we decide to discontinue your specific course
- we stop teaching this discipline
- we decide to close the location (building or campus) in which the course is taught and cannot find suitable premises at a nearby location
- we decide to cease operating altogether
- we can no longer provide the course to you for any other reason, for example
  - we cease operating through no choice of our own
  - we lose the right to provide the course or qualification
  - *[where applicable: we lose our tier 4 licence]*

We retain the right to make minor adjustments and improvements to course, programme and module content year on year, and these in themselves do not warrant the triggering of student protection measures. However, if you feel the course as delivered varies significantly from what you expected, you may be able to seek recourse under consumer or contract law.

### **5. Student Protection Measures**

In the event that the risk materialises, we will take one or more of the following measures to protect your continuity of study.

*[Provider to insert, for example:*

- whenever possible, we will make arrangements to ‘teach out’ current students where we have voluntarily decided to leave the market or close a course. This means that we commit to ensuring the course of study can be completed by all currently enrolled students, even though the course is being discontinued and we will not be taking on new student cohorts.

and/or

- we will support you in seeking another provider and continuing your studies with them, utilising student transfer arrangements.

and/or [if relevant]

- this course is validated by [*name of provider*] and there are arrangements in place that, should our campus close students will be able to transfer to that institution to complete your studies.]

All these measures have been tested and we are confident they are viable. We will take into consideration the needs of all our students, including those with mobility considerations or special educational requirements.

Measures contained in the plan may be brought into play at any time, if, for example, doing so would reduce the impact or likelihood of any interruption to students' studies.

## **6. Notification, advice and support**

We will notify you of any changes which may affect your studies in a timely manner. Should the student protection plan need to be triggered, you will be notified by [*name of office/person*]. We commit to contacting you at least [XX *weeks/months*] prior to the intended dates of course change or closure.

Advice and support will be offered in the first instance by [*name of office/person*]

Additional, independent, advice and support is available from [*name of office/person*].

## **7. What can I do if I have a complaint?**

If you are not content with the proposed outcomes, they can raise the issue with the Office of the Independent Adjudicator, at <http://www.oiahe.org.uk/>.

## Student Complaints (Condition G)

Condition G: The provider must cooperate with the requirements of the student complaints scheme run by the Office of the Independent Adjudicator for Higher Education including the subscription requirements and make students aware of their ability to use the scheme.

### Summary:

- Applies to all registered providers.
- Initial or general ongoing condition: ongoing condition.
- Legal basis: Condition not specifically referred to in legislation (not mandatory)

### Legal Basis:

216. There is no express statutory reference to a student complaints condition for individual providers, but section 13 of HERA permits the OfS to create initial and ongoing registration conditions, which are not specified as conditions in HERA.
217. While it is not mandatory for the OfS to impose this as a condition of registration, section 89 of HERA amends the definition of qualifying institutions for the student complaints scheme for higher education so that all registered providers are required to become members of the scheme.
218. The Office of the Independent Adjudicator for Higher Education (the 'OIA') is designated under the Higher Education Act 2004 as the operator of the complaints scheme (OIA Scheme) for higher education students in England and Wales. The Higher Education Act 2004 defines a 'qualifying institution' and providers that fall within that definition are required to become members of, and comply with, the OIA Scheme.
219. HERA amends the definition of "qualifying institution" to bring into OIA membership the following providers (if they are not already qualifying institutions): (i) all registered providers on the OfS Register; and (ii) providers in England delivering higher education courses leading to an award granted by another OIA member provider in England or that are authorised to grant taught awards under validation arrangements with the OFS.
220. HERA also ensures that a provider must continue to be a member of the OIA Scheme for a further period of up to 12 months from the date on which it ceases to be a qualifying institution. During this period, it is known as a 'transitional institution'. Complaints may only be brought in relation to acts or omissions which occurred whilst the provider was a qualifying institution. This provides

students with an opportunity to bring a complaint or complaints to the OIA about issues that occurred in the period leading up to their provider ceasing to be a 'qualifying institution'.

221. The legislation ensures that all providers who register with the OfS automatically become a qualifying institution of the student complaints handling scheme. OIA is able to review complaints where the substantive events complained about occurred after the provider becomes a qualifying institution. Those providers that are not already members of the scheme will need to contact the OIA and pay their subscription fees. This will be an ongoing registration condition for all registered providers.

### **Definitions:**

222. The OfS will take "subscription requirements" to mean the annual subscription fees charged by the OIA.

223. The OfS will take "Student complaints scheme" to mean the scheme established under the Higher Education Act 2004 which provides an alternative to the courts for students with unresolved student complaints.

224. The OfS will take OIA to be the designated operator of the student complaints scheme for higher education.

### **Guidance**

#### General ongoing condition:

225. The OIA reviews complaints from students about acts and omissions of higher education providers which are members of the OIA Scheme. The OIA cannot review complaints about matters relating to academic judgment or admissions. Students must, normally, have exhausted the provider's own internal procedures before bringing a complaint to the OIA. Further information about the OIA Scheme can be found on the OIA's website: [www.oiahe.org.uk](http://www.oiahe.org.uk).

226. Every registered higher education provider will be a 'qualifying institution' as defined in section 11 of the Higher Education Act 2004 and will therefore be required to become members of, and comply with, the OIA Scheme. Providers should contact the OIA for further information on this. The OIA is funded by subscriptions from its member providers. Core subscriptions are calculated by reference to the member provider's size and type. The OIA Scheme is free at point-of-use for students.



Monitoring, requests for additional information and specific ongoing conditions:

227. Providers will demonstrate compliance with this condition by cooperating with the complaints handling scheme and the subscription requirements.

228. The OfS will take into account information that it receives from the OIA in relation to a registered provider's cooperation with the complaints handling scheme and compliance with the requirement to pay fees. Where a provider has failed to do this, the OfS will regard this as a failure to comply with a condition of registration.

## Student transfer arrangements (Condition H)

Condition H: The provider must publish information about its arrangements for a student to transfer. If the provider lacks such arrangements, it must explain how it facilitates the transfer of a student

### Summary:

- Applies to: Approved and Approved (fee cap) categories
- Initial or general ongoing condition: ongoing condition
- Legal basis: not mentioned within legislation (not mandatory)

### Legal basis:

229. Section 13 of HERA permits the OfS to create initial and ongoing registration conditions which are not specified as conditions in HERA.

### Definitions:

230. N/A

### Guidance

#### General ongoing condition of registration:

231. The governing bodies of Approved and Approved (fee cap) providers must provide to the OfS, and publish, information about the provider's arrangements for students to transfer into and out of that provider's higher education courses.

232. If the provider has no such arrangements, the governing body of that provider must provide to the OfS, and publish, details of how students can transfer.

#### Monitoring, requests for additional information and specific ongoing conditions:

233. Providers will demonstrate compliance with this condition by providing information on their transfer arrangements as described above.

234. If a provider fails to meet this registration condition to the satisfaction of the OfS, the OfS can, at its discretion, request further information from the provider and make this publicly available. It can also work with the provider to facilitate the provision of student transfer arrangements in accordance with section 38 of HERA.

## Part B: Other registration conditions

### Notification of changes to register to maintain accuracy (Condition I)

- Condition I: “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”

#### Summary:

- Applies to: Registered basic, Approved, Approved (fee cap) categories
- Initial or general ongoing condition: ongoing condition
- Legal basis: section 8 of HERA (mandatory)

#### Legal basis:

235. Section 8(1)(a) of HERA sets out a mandatory ongoing condition which applies to all registered providers, requiring them to notify the OfS of any change of which it becomes aware that affects the accuracy of their information on the register.

#### Guidance

##### General ongoing condition:

236. The purpose of this provision is to ensure that the OfS is able to maintain the register as an authoritative and accurate record of the providers for which it has regulatory oversight.

237. A provider must provide information whenever the information on the register has become inaccurate or where the provider has become aware of a change of circumstances or status of which the OfS should be informed (such as a change of contact details or franchising partners). The provider is likely to be the primary source of updated information, and will be expected to respond in a timely manner to the OfS, and/or be proactive in supplying this information.

238. The governing body of the provider is required under section 8 of HERA to 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.

239. The OfS will update the register with the latest regulatory information such as the category of the provider, links to the latest quality assessments, and information on specific ongoing conditions and sanctions. It may also add information it holds or obtains regarding the provider’s status, such as its latest TEF awards. For information that relates to provider contact information, such as the name, contact address and website address the OfS will expect the provider

to notify it of any changes. Providers will also be expected to notify the OfS if any of the changes the OfS has made on the register have resulted in inaccurate information being published. While it is not the responsibility of the provider to ensure the OfS has entered correct information, if the provider becomes aware that any information is incorrect, it should inform the OfS.

240. The OfS will require the provider to inform it of any change within 28 days of this being identified. This notification would need to be accompanied by any relevant supporting evidence or information to enable the OfS to verify that the change is required. The information required to verify the change will vary depending on the change, for example this might be the URL for a new website or proof of address where the contact address has changed, and if the OfS requires additional evidence, this will be set out in communication from the OfS.

Monitoring, requests for additional information and specific ongoing conditions:

241. The OfS may request information from providers if it wishes to verify the accuracy of information displayed on the register, or to investigate if it is brought to its attention that information may be incorrect or out of date.

242. Where inaccurate information is identified the OfS may require the provider to supply an explanation or commitment to correct the information within a timescale specified in correspondence.

243. Where the OfS finds evidence that information is incorrect through mismanagement, negligence or deliberate intent to delay or conceal correct information from appearing, it may take appropriate action which may include putting in place enhanced monitoring or specific ongoing conditions requiring for example a provider to supply evidence that they have checked and verified the data on a regular basis. The OfS may consider whether this prompts questions about compliance with other conditions such as information or management and governance conditions.

## Provision of information the OfS and designated bodies require to perform their functions (Conditions J1 and J2)

- Condition J1: For the purposes of assisting the OfS in performing any function conferred on the OfS under any legislation, the governing body of a provider must:
  - (a) 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 by the OfS;
  - (b) 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 by the OfS and notify the OfS of the outcome of any independent verification at the time and in the manner and form specified by the OfS;
  - (c) 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 to the OfS or a person nominated by it.

The requirements in paragraphs (b) and (c) do not affect the generality of the requirement in paragraph (a).

Condition J2: “For the purposes of the designated data body’s duties under sections 64(1) and 65(1) of HERA, the provider must provide the designated data body with such information as the designated data body specifies at the time and in the manner and form specified by the designated data body.”

### Condition J1 – provision of information to the OfS

#### Summary:

- Applies to: Registered basic, Approved, Approved (fee cap) categories
- Initial or general ongoing condition: ongoing condition
- Legal basis: section 8 of HERA (mandatory)

#### Legal basis:

244. Section 8(1)(b) of HERA sets out a mandatory ongoing registration condition for all registered providers, requiring them to provide information to the OfS (or a nominated body) for the purpose of the performance of the OfS’s functions as the OfS may require them to provide.

## Guidance:

245. It is expected that the information that a provider must supply to meet these conditions will depend on its category of registration and the risk assessment carried out at the point of registration and ongoing. All providers must ensure they put in place sufficient and appropriate resources in their internal data systems in order to be able to submit reliable information, including data.

246. This includes any information held by any subcontractors that may be providing services on the provider's behalf.

### *Information requirements for providers in the Approved categories*

247. The OfS may require providers in the Approved categories to supply information in respect of any of the conditions of registration that apply to them or to enable the OfS to perform its functions, such as assuring compliance with ongoing registration conditions, assessing and identifying risk and investigating issues which may arise.

248. In addition, providers must proactively notify the OfS of 'Reportable Events': any events or circumstances that affect or could materially affect their corporate form or business model, and/or ability to comply with the registration conditions as soon as reasonably possible once they become aware of them.

249. Reportable events are:

- a change in circumstances, including:
  - sales (of either the provider itself, a part of it, or its parent)
  - mergers
  - acquisitions
  - material change in business model (such as a move to focus on further instead of higher education)
  - change in legal status
  - other, similar structural changes, such as establishment of joint ventures, separation into multiple entities, etc.
  - other changes resulting in a change of ownership
- a change of control, defined as a change of more than 50% of the controlling interests or ownership of the designated provider (this includes, but is not limited to, a change in directors/trustees, shareholders or companies in control of an organisation). Some examples of changes that should be reported include:
  - instances where a controlling share of a provider, or its parent organisation/s, is acquired by another organisation
  - where control of more than 50% of shares in a provider changes

- changes of more than 50% of trustees, directors or shareholders at a provider, for example
  - if you have one shareholder who sells 51% of shares to a second party
  - if you have five directors and, over the course of a year, three of these change (you would report this at the point that the third director changes)
- the provider becoming aware of suspected fraud or financial irregularity
  - the provider ceases to provide higher education
  - regulatory action by other regulators, e.g. Health and Safety Executive, Home Office
  - loss of accreditation by a Profession, Statutory or Regulatory Body (PSRB)
  - any new partnerships, such as validation or franchising arrangements
  - opening of a new campus
  - intended course, campus or institutional closure
  - any other material events with possible financial viability or sustainability impacts, such as:
    - material change in actual or forecast financial performance and/or position
    - material change in gearing
    - material unplanned changes in student numbers
    - for those with legally binding deeds of undertaking underpinning their financial sustainability, a withdrawal of the deed (including as a result of change of control, even where the new owner will offer a similar deed) or a material adverse change in the guarantor's financial position
    - sale of significant assets
    - redundancy programmes

This is not intended to be an exhaustive list.

*Information requirements for Registered basic providers*

250. For initial registration, we expect Registered basic providers will be required to submit information to the OfS to demonstrate that they are providers of higher education level courses. Once registered, providers will be expected to supply information to the OfS annually and to respond with information to any monitoring request, random sampling or investigation where the OfS has cause to check compliance with registration conditions. Further detail on the information requirements for Registered basic providers can be found at Annex B of the main consultation document.

## Monitoring, requests for additional information and specific ongoing conditions

251. Monitoring by the OfS will take into account the reliability and timeliness of data and information supplied. Where problems are identified, the OfS may take steps to ensure compliance, whether through enhanced monitoring or specific ongoing conditions. These might for example require the nominated accountable officer to oversee a particular course of action designed to ensure that internal data systems are improved and data is gathered and reported more effectively. An additional requirement for example, may be to confirm more frequently whether any reportable events have taken place within a given period. This could be imposed in instances where a provider has previously not reported or has deliberately withheld information that should have been disclosed in accordance with the general ongoing condition.

Subsections b and c of Condition J1:

252. The governing body of the provider is responsible for ensuring information, including data, they submit to the OfS is reliable and timely. If the OfS has reason to believe that information received is not reliable, and/or it has reason to believe that a provider is not complying with its initial or ongoing registration conditions, it may choose to investigate the matter. This investigation may result in additional requirements to provide information to the OfS.

253. Providers must cooperate with any such investigation, which includes granting the OfS access to its information (including data), documents and systems as required, and proactively making information available to the OfS. The OfS may also ask providers to get information externally verified, for instance by auditors. Providers must engage with the OfS's investigation in an open, honest and proactive manner, and respond positively and promptly to any requests made by the OfS as part of an investigation.

## **Condition J2– provision of information to the designated data body**

### **Summary:**

- Applies to: Approved, Approved (fee cap) categories
- Initial or general ongoing condition: ongoing condition
- Legal basis: section 8 of HERA (mandatory)

### **Legal basis:**

254. Section 8(1)(c) of HERA sets out a mandatory ongoing registration condition for all registered providers, requiring them to provide the designated body with information for the purposes of the performance of its duties under sections 64(1) and 65(1) – compiling, making available and publishing appropriate higher education information – as the designated body may require it to provide.



## Guidance

255. The proposed condition requires providers in the Approved categories to provide to the designated data body the information it requires for the purposes of its functions. Providers will be expected to comply with the requirements set by the designated data body following the publication and consideration of a data strategy in Spring 2018. This could include providers having to follow standard data collection requirements in set timeframes. Providers must provide timely and accurate data and will be required to comply with data auditing processes to ensure their data collection systems are robust and consistent.
256. In terms of defining the precise data requirements, section 64(5) to (7) of HERA requires that the OfS (or the DDB) obtain and consider views from UKRI and the Secretary of State (as well as the OfS if appropriate) on what data should be compiled and made available. Section 65(7) of HERA requires that the DDB or the OfS give particular consideration to what would be helpful to students on higher education courses, people thinking about undertaking such courses and registered higher education providers when deciding what information is appropriate for publication. Section 65(10) of HERA requires that the OfS or DDB must periodically consult on what information is appropriate to publish (as well as the timing, form and manner of the publication). The consultation running in parallel in respect of identifying a suitable body to perform the role of the DDB provides outline information about the types of data that providers in the Approved categories will be required to supply. It will then be for the OfS or the DDB to publish a data strategy to consider the precise dataset required to meet ongoing conditions of registration.
257. Sections 64(8) to (9) and 65(11) to (12) also require the OfS and the DDB to cooperate with other bodies collecting data and have regard to reducing the data collection burden on providers. Chapter 6 of the main consultation document sets out where the OfS may need to share data and intelligence with others.

### **Monitoring, requests for additional information and specific ongoing conditions:**

258. OfS monitoring will take into account the reliability and timeliness of data and information supplied. Where problems are identified, the OfS may take steps to support compliance, whether through enhanced monitoring or specific ongoing conditions. These might for example require the provider to work with the designated data body to identify staff training needs or to specify improvements to internal data systems to enable the provider to make more reliable data returns.

## Mandatory Fee Limit (Condition K)

- Condition K: A provider in the Approved (fee cap) category must charge fees within the prescribed limits determined by their quality rating and access and participation plan.

### Summary:

- Applies to: Approved (fee cap)
- Initial or general ongoing condition: ongoing condition
- Legal basis: section 10 of HERA (mandatory)

### Legal basis:

259. Section 10 of HERA imposes a mandatory fee limit condition on providers within the Approved (fee cap) category of the register, to secure that regulated course fees do not exceed a fee limit. This ensures students are entitled to receive loan funding to cover full course fees. Schedule 2 of HERA sets out that fee limits are determined on the basis of whether a provider has an agreed Access & Participation Plan and according to their TEF award.

260. Section 11 of HERA requires the OfS to publish annually a list of all providers that are subject to a fee limit, and what that limit is in each case.

### Guidance

#### Initial and general ongoing condition:

261. This is a mandatory condition which is proposed to apply to all providers within the Approved (fee cap) category and would require them to set fees for all higher education courses to which the cap applies, as determined by their TEF rating and whether or not they have an access and participation plan. The imposition of this condition is determined automatically by these factors and it is proposed that basic information about which fee limit applies will appear as a link from a provider's individual register entry, in addition to the annual list of all providers subject to the fee cap, which the OfS must publish in compliance with section 11 of HERA.

#### Monitoring, requests for additional information and specific ongoing conditions:

262. The OfS may request information from providers confirming the current or intended fees for all courses offered, to ensure these comply with the fee cap imposed. Where breaches of the cap occur the OfS will consider proportionate monitoring and interventions, including sanctions. For example, the provider may be subject to enhanced monitoring or specific ongoing conditions, which might

relate to rectifying incorrectly advertised fees or providing more detailed or regular information on fees before they are advertised.

## Facilitate electoral registration (Condition L)

- Condition L: The provider must comply with OfS guidance on facilitating electoral registration in cooperation with electoral registration officers.

### Summary:

- Applies to: Approved, Approved (fee cap) categories
- Initial or ongoing condition of registration: ongoing condition
- Legal basis: section 13 of HERA (not mandatory)

### Legal basis:

263. Section 13(1)(f) of HERA provides that the initial or ongoing registration conditions may include “a condition requiring the governing body of the provider to take such steps as the OfS considers appropriate for facilitating cooperation between the provider and one or more electoral registration officers in England for the purpose of enabling the electoral registration of students who are on higher education courses provided by the provider”. Section 13(5) of HERA makes clear that for the purposes of subsection (1)(f)— “electoral registration officer in England” means a registration officer appointed under section 8(2) of the Representation of the People Act 1983 and “the electoral registration of students” means the registration of students on a register of electors maintained by such an officer under section 9 of that Act.”

### Rationale

264. A healthy democratic society is one which has social justice at its heart. It is also dependent on the active participation of its citizens. The Government is, therefore, committed to helping ensure that everyone who is eligible to vote is able to do so, including students. However, people cannot vote until they have registered to vote and higher education providers have a major part to play in achieving this.

265. Evidence gathered by a recent Cabinet Office survey suggests there is a gap in awareness and understanding of the current electoral registration legislation amongst many higher education providers, in that they are not aware of their legal duty to comply with Electoral Registration Officers’ (ERO) requests for data that EROs believe is required for the maintenance of complete and accurate local electoral registers.

266. At the same time, while we want higher education providers to do more to help register their student populations, we recognise that each provider, and their local ERO, should have the freedom to decide what works best locally. So rather than setting out specific steps to be taken to aid registration, we will provide examples of good practice to help support the providers to decide which method(s) best meet their specific requirements and circumstances.

## Guidance

267. The condition will require higher education providers to cooperate with EROs, in accordance with such steps as the OfS considers appropriate. The Secretary of State will issue guidance under section 2(3) of HERA as to how the OfS is to perform its functions in relation to this condition; the OfS will be under a statutory obligation to have regard to this guidance. Subject to the outcome of this consultation, we expect this Ministerial Guidance is likely to:

- reinforce the requirement for higher education providers to co-operate with EROs' requests under Regulation 23 of the Representation of the People (England and Wales) Regulations 2001 for information on students for the purposes for electoral registration. We want providers to understand that they have a legal obligation to co-operate with these requests
- include a direction for higher education providers to work in partnership with their local electoral services team to actively promote electoral registration amongst their student populations

268. Through this condition, it is the Government's intention that higher education providers support EROs – who have a duty to maintain the completeness and accuracy of their local electoral register – through the following actions:

- a. understanding their duty to comply with requests for student information (taking into account data protection requirements for the purposes of electoral registration under Regulation 23 of the Representation of the People (England and Wales) Regulations 2001
- b. developing and maintaining partnerships between themselves and the ERO/EROs of any relevant area(s)
- c. working with EROs to actively promote electoral registration amongst their students

269. As regards the likely direction for higher education providers to work with EROs to actively promote electoral registration amongst their student populations, the Government will provide examples of good practice on student electoral registration on which higher education providers and electoral service

teams can draw, as part of the Democratic Engagement Strategy, due to be published in November 2017.

270. The OfS will expect higher education providers to demonstrate that they are complying with its electoral registration guidance and will monitor how they are delivering against actions specified in that guidance. For example, in relation to the Government's intentions in paragraph 268 above:

- evidence higher education providers might provide to demonstrate that they are complying with action a. includes, for example, being able to demonstrate that, when approached by an ERO, they have complied with requests for student data
- evidence higher education providers might provide to demonstrate that they are complying with action b. includes, for example, being able to demonstrate how they have facilitated cooperation and developed a good partnership and how that partnership operates and what steps they have taken to achieve these
- evidence higher education providers might provide to demonstrate that they are complying with action c. includes, for example, providing a link to registering to vote on their intranet page or in email or postal communications

271. The roles and responsibilities of the EROs are not affected by this condition, who are still responsible for maintaining a complete and accurate local electoral register.

272. The Government proposes to review and evaluate the overall effectiveness of this condition, once it has been implemented over a sufficient period to facilitate the gathering of appropriate data in terms of numbers of students who have registered. The evaluation will examine how effective the condition has been at helping increase successful applications from students to join the electoral register.

## Pay OfS registration and OfS other fees and designated bodies' fees (Condition M)

- Condition M: The provider must pay its annual registration fee and other OfS fees in accordance with regulations made by the Secretary of State and, where applicable, fees charged by the designated bodies.

### Summary:

- Applies to: Registered basic, Approved, Approved (fee cap) categories
- Initial or general ongoing condition: ongoing condition
- Legal basis: section 13 of HERA (not mandatory)

### Legal basis:

273. Section 13(d) of HERA allows the OfS to impose a condition requiring the payment of OfS registration fees. This condition will apply to all registered providers. This provision is underpinned by section 70 of HERA, which enables the OfS to charge a provider fees for initial and ongoing registration. Any OfS fee charged must be in accordance with regulations made by the Secretary of State, subject to Parliamentary scrutiny.

274. Section 13(e) of HERA allows the OfS to require providers, through an initial and ongoing condition, to pay fees to the designated bodies as defined in sections 27 and 67 of HERA. It also allows such a condition to require that providers pay other fees charged by the OfS under section 71 of HERA, distinct from registration fees, in connection with any activity undertaken or service provided in the performance of its functions that is specified in regulations. We envisage the requirement to pay an annual fee to designated bodies will apply only to providers in the Approved categories, since that fee would be for quality assessment and data collection activities not undertaken in relation to Registered basic providers. The only exception might be where providers of unaccredited qualifications intending to register in the Registered basic category might be required to pay a fee to the designated quality body for assessment of their approach to determining the level of qualifications.

275. The provision for the designated bodies to charge the fees that providers are required to pay are set out in sections 28 and 67. The designated quality body may charge for assessment functions and its role in providing advice to the OfS in relation to degree awarding powers. The designated data body may charge for carrying out the compilation and publication functions under sections 64 and 65.

## Guidance:

276. Proposals on how registration fees will be calculated are set out in the parallel consultation on the OfS registration fees published alongside this consultation, with a view to announcing the final fee model in Spring 2018, so that providers joining the OfS register will know broadly what they will be liable to pay. This consultation also addresses details of how the OfS will use the powers available to it under sections 70 and 71 to determine the operational details around how and when fees may be paid. The Secretary of State must then publish regulations setting the fee levels to be charged from academic year 2019/20.

277. Annual fees for the designated data and quality bodies and arrangements for paying these will be determined by the designated bodies once the process of designation has taken place. Details are set out in the parallel consultations on the designated bodies.

### Monitoring, requests for additional information and specific ongoing conditions of registration:

278. Penalties for late payment of fees will be set out by the OfS and designated bodies. The OfS may also take account of any failure to pay fees as a breach of a registration condition and may impose appropriate interventions or sanctions in line with its general powers set out under chapter 5 of the main consultation document.



## Complying with terms and conditions of funding (Condition N)

- Condition N: The provider must comply with any terms and conditions attached to financial support received from the OfS and UKRI under sections 41(1) and/or 94(2) of HERA. A breach of such terms and conditions of funding will be a breach of this condition of registration.

### Summary:

- Applies to: All registered providers in receipt of funding from the OfS or UKRI
- Initial or ongoing condition: ongoing condition
- Legal basis: HERA Sections 41(1) and 94(2), (not mandatory)

### Legal basis:

279. HERA Section 41(1) allows the OfS to impose terms and conditions of funding, and Section 94(2) allows UKRI to impose terms and conditions of funding. These would be separate from and in addition to the registration conditions and would be intended to:

- provide additional more stringent levels of financial assurance as required by HM Treasury's rules on managing public money required of those in direct receipt of government funding
- set out any terms and conditions regarding the purposes for which the funds can be used

280. However, the OfS may also set general ongoing (e.g. under condition E2) or specific registration conditions that are applicable to providers in receipt of grant funding.

### Guidance:

#### General ongoing condition:

281. It is a general ongoing condition that a provider must comply with any terms and conditions imposed on financial support supplied by the OfS or UKRI, whether grant, loan or other payments. The terms and conditions of funding will be set out by the OfS and UKRI.

282. Providers in receipt of grant funding are subject to additional public interest principles as part of the governance condition, which is a condition of registration (see Conditions E1 and E2). The OfS and UKRI are able to impose additional

terms and conditions specific to the nature or purpose of the funding. Compliance with all of these terms and conditions would be covered by this Condition of Registration.

283. This condition will apply to all registered providers in receipt of grant, loan or other payments from the OfS or UKRI.

Monitoring, requests for additional information and specific ongoing conditions of registration:

284. Eligibility for grant funding is set in regulations made by the Government (subject to approval by Parliament). As set out in the main consultation document, we are proposing that eligibility for direct grant funding provided by UKRI through Research England under section 97 HERA (including quality-related research funding) will be limited to those providers in the Approved (fee cap) category. Direct grant funding provided by the OfS teaching grant funding or any other payments by the OfS would also be limited to those in the Approved (fee cap) category. This condition would apply to any providers in receipt of such funding.

285. However, any provider who wishes to apply, will still have access to a number of research grant sources, including competitive research grant funding from a broad range of programmes managed by Research Councils. This condition will also apply to providers in receipt of such funding, regardless of their registration category.

286. The condition is designed to ensure that in addition to any actions the OfS or UKRI may take in response to a breach of the terms and conditions of grant, the OfS can also take wider regulatory action.

Additional information and specific conditions of registration:

287. If a provider fails to comply with the terms and conditions of financial support provided by the OfS or UKRI, the OfS may request further information from UKRI or the provider to enable it to investigate and take appropriate action if required. The terms and conditions of funding would set out details of any actions that may be taken in relation to the suspension, withdrawal or repayment of funding and the circumstances in which these would apply.

288. The OfS would then need to take a decision about whether any additional action or sanction would be necessary in relation to the breach of the condition of registration. If necessary it could impose enhanced monitoring e.g. to ensure tighter scrutiny of future grant spending, or could impose a specific ongoing condition of registration such as to require specific actions supporting the delivery

of grant funded projects such as the appointment of staff or imposing an action plan. In cases of more serious mismanagement of funds, the OfS could also impose a specific condition to restrict a provider's eligibility for grant funding.

### **Financial Assurance for Grant Funding**

289. The OfS and UKRI (Research England) will be able to impose on those providers which receive grant or research funding additional terms and conditions associated with this funding. These would be separate from and in addition to the conditions of registration and would be intended to:

- provide additional more stringent levels of financial assurance as required by HM Treasury's rules on managing public money required of those in direct receipt of government funding
- set out any terms and conditions regarding the purposes that the funds can be used for

## Accountability (Condition O)

Condition O: The governing body of the provider accepts responsibility for its interactions between the provider and the OfS, and the provider's compliance with all of its registration conditions. To assist and enable it to discharge this responsibility, the governing body must designate a senior officer as the 'accountable officer' who shall act as the principal contact for the OfS, and must notify the OfS accordingly.

### Summary:

- Applies to: Registered basic, Approved and Approved (fee cap) providers
- Initial or general ongoing condition: ongoing condition
- Legal basis: Not specifically referred to in legislation (not mandatory)

### Guidance

#### Initial condition:

290. The "Accountable Officer" must be a senior officer at the provider, and should normally be the head of the provider, Chief Executive, Director, or similar. The accountable officer is the officer who reports to the OfS, the Designated Data Body and the Designated Quality Body on behalf of the provider.

291. This condition aligns with the broader accountability principle in the list of Public Interest Principles, which states that the governing body is responsible for operating openly, honestly, accountably and with integrity with all students, the OfS and stakeholders.

292. As part of its initial application for registration the governing body of the provider must provide the OfS with the name and contact details of the accountable officer. The OfS will write to that individual explaining what the responsibilities of an accountable officer involve.

#### General ongoing condition:

293. The governing body, interacting with the OfS via the accountable officer, will be responsible for ensuring the timeliness and accuracy of any data or information submitted by the provider to the OfS or its designated bodies in compliance with other general ongoing conditions.

294. The governing body of the provider must inform the OfS of any change of accountable officer, and supply contact details. On being notified by, or on behalf

of, the governing body of a new accountable officer, the OfS will write to that individual explaining what the responsibilities of an accountable officer involve.

Monitoring, requests for additional information and specific ongoing conditions of registration:

295. The OfS and its designated bodies may request additional information to test and verify the accuracy of the information and data returns made, as overseen by the accountable officer. Any concerns over the accuracy or timeliness of the information and data will be brought to the attention of the accountable officer and it will be for that individual and the governing body to demonstrate to the OfS and designated bodies how it intends to and subsequently how it has addressed any weaknesses. Consistent failure to do so could lead to enhanced monitoring by the OfS and if necessary the OfS could put in place a specific ongoing condition if the governing body is failing to address any problems identified. This could be to agree on a specific action plan, or if there are serious concerns about, for example, the competence or cooperation of the accountable officer, by placing a requirement on the governing body of the provider to provide training for the individual or to appoint a more suitable accountable officer.

## Teaching Excellence and Student Outcomes Framework participation (Condition P)

Condition P: The provider must participate in the Teaching Excellence and Student Outcomes Framework (TEF)
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### Summary:

- Applies to: Approved and Approved (fee cap) categories with a headcount of more than 500 students
- Initial or general ongoing condition: ongoing condition
- Legal basis: HERA 25 (not mandatory)

### Legal basis:

296. Section 25(1) of HERA 2017 permits the OfS to make arrangements for a scheme to give ratings:

- to English higher education providers regarding the quality of, and the standards applied to, higher education that they provide where they apply for such a rating
- to higher education providers in Wales, Scotland or Northern Ireland, in respect of whom the appropriate consent is given, regarding the quality of, and the standards applied to, higher education that they provide where they apply for such a rating

297. Section 26 of HERA 2017 places a duty on the Secretary of State to appoint an independent reviewer of any scheme made under section 25.

298. It is anticipated that the OfS will adopt the TEF as a scheme made under section 25 during Academic Year 2017/18.

### Definitions:

299. Providers in Wales, Scotland and Northern Ireland may opt to take part in the TEF but are not subject to this condition.

### Guidance

300. The OfS will have the power to make arrangements for a scheme to give ratings to quality and standards of teaching in universities. This will be delivered through the TEF. TEF rates universities as Gold, Silver or Bronze, or makes a Provisional Award where it is not possible to give a rating.

301. All providers in England with a headcount of more than 500 students will be required to participate in TEF, provided they are eligible to do so<sup>12</sup> and are registered in the Approved or Approved (fee cap) categories of the register. Those with fewer students will be able to apply to participate, providing that they can meet the eligibility criteria. Institutions in Wales, Scotland and Northern Ireland are not bound by this registration condition but must have the appropriate consent, from their Ministers, or in the case of Northern Ireland, from its Department for the Economy.
302. Taking part means that, if a provider does not currently have a TEF rating, or its TEF rating would expire within the next year, it must apply for TEF in the next TEF application window.
303. If a provider cannot take part in the TEF because it is not eligible to do so then it is not in breach of this condition. However, as soon as it becomes eligible again, this condition will oblige it to take part in the TEF at the next opportunity to do so by applying in the next TEF application window.
304. If a provider is otherwise eligible but does not have the necessary data, then it will be able to apply for a provisional award and that is considered being eligible.

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<sup>12</sup> Eligibility criteria are set out in the TEF specification at pages 13-14:  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/650494/Teaching\\_Excellence\\_and\\_Student\\_Outcomes\\_Framework-Specification.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/650494/Teaching_Excellence_and_Student_Outcomes_Framework-Specification.pdf)



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