



Department  
for Education

# **Summary Impact Assessment**

**The Office for Students and Regulatory  
Framework**

**October 2017**

## Introduction

1. The Higher Education and Research Act (HERA) received Royal Assent on 27 April 2017<sup>1</sup>. The Act aims to promote greater competition, choice and standards in the higher education sector with the goal of delivering better outcomes and value for money for students and taxpayers who underwrite the system. It also aims to strengthen the UK's world-class capabilities in research and innovation. In doing so, the Act supports the role higher education plays as an engine of social mobility and productivity growth, delivering the key skills needed for the UK economy.
2. As part of the next phase of the policy development process, the Government is issuing a series of consultation documents, which set out in more detail the model for charging Office for Students (OfS) registration fees and how the new regulatory framework will work in practice, including the single entry gateway, conditions of registration and the risk-based monitoring system.

## Summary of impacts

3. This summary impact assessment sets out the overarching economic objectives of a modern effective regulatory framework in higher education and summarises the key impacts. Those wishing for further details of the Government's proposals should refer to the Regulatory Framework consultation, '*Securing student success: risk-based regulation for teaching excellence, social mobility and informed choice in Higher Education*', and the OfS Registration Fees consultation documents.
4. Table 1 below provides an overview of the main impacts on students, Higher Education (HE) Providers, taxpayers and other parts of society. The creation of a more streamlined and less burdensome entry process for new high quality providers and the move towards a risk-based monitoring system represent some of the key benefits of the new regulatory framework.
5. The introduction of registration fees to partly fund the newly established Office for Students will be an additional cost for new and incumbent HE providers, although, this will be offset by a corresponding saving to the taxpayer. There will likely be a familiarisation cost for providers - associated with understanding and complying with the conditions of registration when they enter the register - however, this is estimated to be small.

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<sup>1</sup> Higher Education and Research Act, 2017, <http://services.parliament.uk/bills/2016-17/highereducationandresearch.html>

**Table 1: Summary of impacts of regulatory framework**

		<b>Students</b>	<b>Higher Education Providers</b>	<b>Government/ Taxpayers</b>
<p><b>Entry to the Sector and Single Gateway</b></p> <p>Creation of the register - a single entry gateway to the higher education sector.</p> <p>Level the playing-field to allow new high quality providers to enter the sector, including through reforms to the validation system, creating a more flexible process to obtain degree awarding powers and making it easier to gain university title.</p>	<p><b>Benefits</b></p>	<p>Better value for money and improved student outcomes from high-quality provision</p> <p>Greater choice and diversity in the sector increasing its ability to support a wider set of student needs</p>	<p>Reduced barriers to entry and increased growth</p> <p>Reduced administrative costs and duplication of processes</p>	<p>More competitive sector and innovation</p> <p>Improved sector results in greater confidence, more students and graduates and faster loan repayments</p>
	<p><b>Costs</b></p>		<p>Costs associated with familiarisation of the new system and registration for existing providers</p>	<p>Monitoring costs associated with more providers, though the sector will bear the majority of regulation costs</p>
<p><b>Initial and ongoing conditions of registration</b></p> <p>Introducing baseline standards and ongoing conditions that providers must meet, which vary by registration category of the provider. These include the transparency condition, student protection plans, compulsory TEF, facilitating electoral registration.</p>	<p><b>Benefits</b></p>	<p>Protecting students' interests through increased transparency and better information to make informed decisions</p> <p>Widening participation of HE</p> <p>Easier and less costly to continue study in the event of closure</p>	<p>Benefits associated with the relevant registration category (e.g. eligibility for student loans, eligibility for OfS grant funding)</p>	<p>Greater number of students able to continue study, supporting loan repayments</p> <p>Meets Government commitments on voter registration</p> <p>Supports the promotion of greater social mobility</p>
	<p><b>Costs</b></p>		<p>Developing Access and Participation, and Student Protection Plans and complying with new conditions</p> <p>Providing information under the Transparency, student transfers and TEF conditions</p> <p>Supplying information on staff members earning above £100,000, including detailed information and justification for remuneration packages over £150,000</p>	<p>Cost to the OfS of monitoring conditions</p>

		<b>Students</b>	<b>Higher Education Providers</b>	<b>Government/Taxpayers</b>
<b>Introducing a risk based regulatory approach</b>  Focusing regulatory activities on individual providers and on the areas of most risk to ensure that regulation is proportionate	<b>Benefits</b>	Protecting students by regulating risks to quality of provision and access and participation in HE	Less frequent reviews for low risk providers, reducing unnecessary costs	
	<b>Costs</b>		Increased data provision	
<b>Office for Students registration fees</b>  Introducing OfS registration fees for providers who are registered with the OfS	<b>Benefits</b>	Improved student outcomes, accessibility and value for money	More risk-based regulation	Efficiency savings Removed duplication More effectively regulated sector
	<b>Costs</b>		Proportion of the cost of regulation borne by the sector	Transition and running costs associated with creation of new body
<b>Introduction of student contracts condition</b>  This will improve information on what they can expect from a provider, alongside publicising the complaints procedure if this is different from the reality	<b>Benefits</b>	Protecting a student's consumer rights when attending a HE provider  Ensuring students know what they can expect from a provider, and how to rectify this if things go wrong		Improved outcomes, protection and value for money in the HE sector
	<b>Costs</b>		Costs associated with supplying additional information to the OfS and students, to demonstrate compliance with conditions	
<b>Increasing student transfers</b>  Improving the ease and ability of student to transfer within - and between providers	<b>Benefits</b>	Improving the ability for students to change courses whenever a course or provider does not meet their requirements		Potential for reduced student non-continuation, supporting improved loan repayments and outcomes
	<b>Costs</b>		Loss of student fee income if a student transfers part-way through their studies	

## Protecting student interests in higher education

6. Consumers purchasing goods and services need to have confidence that the product they are buying meets minimum standards of quality and have sufficient information about this product to ensure it meets their needs and aspirations.
7. Higher education is no exception. For students, higher education represents a significant and life changing investment. While the upfront cost of higher education is known, the returns to the students take place over a longer period of time and depend on many factors, including the quality of teaching, the choice of the course and institution, as well as the individual effort of the student.
8. It is therefore critical that students choose the course and institution that best meets their needs and career aspirations. This enables them to achieve the best outcomes possible. Sub-standard teaching quality or ill-informed choices about HE, which mean that the student does not complete their course, or does so with a poorer qualification, can adversely affect a student's future earnings potential after they graduate.

## The rationale for government intervention

9. The rationale for strong and effective regulation in HE, which ensures students' interests are protected, stems from the particular characteristics of higher education and the way in which the sector is currently structured.
10. Over the last twenty-five years, the higher education sector in England has evolved significantly including major legislative reforms that have opened the sector to new high quality providers and which has helped foster stronger competition in the sector. As a consequence, the current regulatory framework and the regulatory bodies that oversee it, are outdated including becoming less effective at achieving further continuous improvements in competition, choice and quality, limiting improvements in the value for money students and taxpayers receive on their investment in higher education. This highlights the need for the creation of a HE market regulator – in the form of the OfS – which can help achieve innovation in the sector on behalf of students.
11. The continued existence of barriers to competition and ongoing information asymmetries are two particular challenges which the new regulatory framework will seek to address. These are discussed in more detail in the next section.

## Restrained competition in the higher education sector

12. Previous reforms have served to lay the foundations for a better functioning and more competitive market in the HE sector. However, as the Competition and Markets Authority (CMA) have noted<sup>2</sup>, while competition in the HE sector has developed, there are still certain aspects of the current system which are hampering stronger competition.
13. For example, the lengthy and costly process of gaining access to the sector can represent a barrier to entry for new high quality providers who must then go through a separate and time-consuming process in order to become eligible for government funding or gain their own degree awarding powers. Competition between incumbent providers can also be distorted because of differences in the way HEIs<sup>3</sup> and APs<sup>4</sup> are regulated and monitored, which gives some an advantage in terms of their ability to attract students.
14. Restrained or distorted competition can lead to poorer student outcomes in a number of ways. For example, it reduces the incentive for incumbent providers to raise their game in improving the quality of teaching and the wider academic experience they offer. It can also diminish the range of courses they provide, limiting the development of new or more innovative courses and modes of delivery (for example, for distant learners or mature students).
15. The new regulatory framework seeks to strengthen competition between new and existing providers by creating a single entry gateway that reduces the barriers to entering the HE market for new high quality providers, creating a level playing field that removes the unfair advantage that some providers may currently enjoy.

## Imperfect or incomplete information about HE provision

16. An inherent characteristic of higher education is that it is a so-called *experience* good, which means that its quality and value cannot be easily or accurately determined beforehand. This particular feature of higher education makes it difficult for students to make informed decisions about which course and institution to attend.
17. This problem is compounded by the fact that the current information landscape may not be fit for purpose, because some of the information which prospective students

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<sup>2</sup> Competition and Markets Authority (CMA), 2015, 'An effective regulatory framework for higher education', <https://www.gov.uk/cma-cases/competition-and-regulation-in-higher-education-in-england>

<sup>3</sup> **Higher Education Institutions** (HEI) are defined as i) a university, or ii) an institution conducted by a higher education corporation, or iii) an institution designated as eligible to receive HEFCE funding, <http://www.hefce.ac.uk/whatwedo/invest/unicoll/highereducationinstitutions/>

<sup>4</sup> **Alternative provider** (AP) means any provider of higher education courses which is not in direct receipt of recurrent funding from HEFCE; or does not receive direct recurrent public funding (for example, from a local authority, or the Secretary of State for Education); and is not a Further Education College

need to choose their course or institution is either incomplete, unreliable or not readily available. Students may take a range of different factors into account when deciding which institution to choose. This includes the quality of teaching at different providers and the wider academic journey from the point of admission to graduation.<sup>5</sup>

18. In the case of information quality, this is being addressed through the creation of the Teaching Excellence and Student Outcomes Framework (TEF),<sup>6</sup> as well as the development of the Longitudinal Education Outcomes (LEO) dataset<sup>7</sup>. TEF aims to assess the quality of teaching at institutions - and on the courses they offer - with the results published in a way that facilitates comparison across institutions, enabling prospective students to make more informed decisions about where teaching excellence can be found. Many HE providers already participated in TEF, and these proposals will see it become compulsory for all large HE providers with over 500 undergraduate students in the approved categories.
19. Separately, the newly created OfS will place a Transparency Duty on providers to publish data on application, offer, acceptance and progression rates, broken down by gender, ethnicity and disadvantage. The need for transparency from institutions includes consideration of their broader performance and the areas they each need to improve; an example of this is their requirement to justify vice chancellor pay above certain levels.

## Improving the academic journey for all

20. While progress has been made over the last decade to address the unequal distribution of access, retention and outcomes - especially of students with protected characteristics and from disadvantaged backgrounds - significant gaps still persist in participation, progression and attainment.
21. For example, in 2016 a young person from the most advantaged backgrounds (POLAR3<sup>8</sup> quintile 5) is 2-3 times more likely to attend higher education than

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<sup>5</sup> More information on student decision making behaviour can be found in BIS Economics Paper No 114., 2011, 'Supporting analysis for the higher education white paper', [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/32110/11-1007-supporting-analysis-for-higher-education-white-paper.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/32110/11-1007-supporting-analysis-for-higher-education-white-paper.pdf)

<sup>6</sup> For more information on TEF please refer to HEFCE guidance: <http://www.hefce.ac.uk/it/tef/>

<sup>7</sup> DfE, 2017, 'SFR18/2017 - Employment and earnings outcomes of higher education graduates by subject and institution: experimental statistics using the Longitudinal Education Outcomes (LEO) data', [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/619512/SFR\\_18\\_2017\\_LEO\\_mainText.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/619512/SFR_18_2017_LEO_mainText.pdf)

<sup>8</sup> POLAR3 (Participation of Local Areas) measures the propensity of young people to participate in HE split into quintiles, with quintile 1 being the most disadvantaged areas (the lowest 20%), and quintile 5 being the most advantaged areas (the highest 20%). For further information please see: <http://www.hefce.ac.uk/pubs/year/2012/201226/>

someone from the most disadvantaged backgrounds (POLAR3 quintile 1)<sup>9,10</sup>. Disadvantaged students also have higher non-continuation rates, which in 2014-15 was 9%, compared to 5% for the most advantaged students<sup>11</sup>. These differences extend to graduate outcomes six months after graduation as well; In 2015-16, around 73% of graduates from less advantaged backgrounds<sup>12</sup> were in the most advantaged occupational groups, compared to 79% of graduates from the most advantaged backgrounds<sup>13</sup>.

22. There also continues to be differences in entry rates by ethnicity. While 2015/16 saw the highest recorded HE entry rates for each ethnic group<sup>14</sup>, a continuing trend has been the low proportion of white 18 year olds entering HE, which is now the lowest of any ethnic group.

23. For this reason, the OfS will have a strong, clear focus on social mobility. As well as the Transparency Duty, the OfS will use access-and-participation statements and plans as an additional lever to promote greater access, progression and success of students from disadvantaged and underrepresented groups.

## The shift to a risk-based regulatory approach

24. The HE sector is highly diverse. HE providers differ markedly in terms of the way they are funded, their mission, and their mix of teaching, research and wider operations. HE providers can also vary significantly in terms of the number and composition of student enrolments, and the proportion of students that come from disadvantaged backgrounds.

25. This diversity means that the risks to students of poorer outcomes and the impact that this may have on their future career prospects is likely to be greater in some part of the HE sector than others. Those at greatest risk are likely to include students from disadvantaged backgrounds who may experience greater barriers to access, retention and success, and students who are geographically less mobile (for example, because of financial or family ties) or located in 'cold spot' areas where there are relatively lower levels of HE provision. This is because they may have

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<sup>9</sup>UCAS, 2016, 'End of cycle report: UCAS Analysis and Research', <https://www.ucas.com/file/86541/download?token=PQnaAl5f>

<sup>10</sup> In 2015/16, around 19.5% of young people from quintile 1 (most disadvantaged) participated in higher education, compared to 46.3% of POLAR3 quintile 5. This is a major improvement on 2008/09 when only 12.9% of quintile 1 students attended a HEP, compared to 42.3% of quintile 5 students

<sup>11</sup> Ofa, 2017, "Outcomes of access agreements monitoring for 2015-16", <https://www.offa.org.uk/wp-content/uploads/2017/06/OFFA-Monitoring-Outcomes-Report-2015-16-Final.pdf>

<sup>12</sup> Those students from households where parents hold jobs from the Standard Occupational Classification (SOC) groups 4-9

<sup>13</sup> DfE, 2017, 'SFR39/2017 – Widening Participation in Higher Education, England 2014/15 age cohort', [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/635103/SFR39-2017-MainText.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/635103/SFR39-2017-MainText.pdf)

<sup>14</sup> UCAS, 2016, 'Equality and entry rates data explorer', available here: <https://www.ucas.com/corporate/data-and-analysis/ucas-undergraduate-releases/equality-and-entry-rates-data-explorer>



more limited options available to them in terms of choice of course and institution, but also the mode of delivery (for example, part-time or distance learning).

26. Therefore, student interests are more effectively protected by government if regulation and monitoring of HE providers is not uniform across the sector, but instead based on the degree of risk they pose to student outcomes. Those providers judged to represent a higher risk would be subject to greater and more frequent scrutiny than those who pose a low risk to students and the HE sector.
27. The diverse nature of HE providers means that they are likely to respond differently to the incentives and challenges created by the new regulatory framework. In most cases, it is expected that the new framework will elicit a positive behavioural response from providers who will use the opportunity to raise their game, improving the student offer in order to reap the financial and reputational rewards that come with it.
28. There will however be instances where some providers may continue to behave in a way that adversely affects student outcomes. Accordingly, the move to a risk-based regulatory approach allows for the OfS to monitor those institutions that evidence suggests are putting students, the taxpayer and the wider HE sector at risk. It will be for the OfS to decide how to act if such issues arise.
29. Student interests and outcomes may also be placed at risk if some providers, intentionally or unintentionally, do not fully act within the spirit and letter of the law as set out in the new regulatory framework. For example, some providers may not fully comply with the conditions of registration because they are still adjusting to the new regulatory framework and have not entirely understood the requirements placed on them. Other providers may not take sufficient and appropriate action to ensure that the course content, quality of teaching and the wider academic experience is fully meeting the student's needs and expectations.

## **Protecting student rights and outcomes**

### **Student protection plans and transfer arrangements**

30. As competition increases, the likelihood of course, campus or faculty closure at certain providers may increase, putting at greater risk the ability of students to access and complete their studies. While students are encouraged to attend whichever institution they feel best fits with their needs - wherever it is in the country - some may be unable to move for whatever reason. The risks of closure could have a greater impact in underserved geographical areas where there is limited available alternative provision. In such cases, students must be protected in a way that enables them to transfer to another course or provider with the minimal disruption and least amount of impact on their future career prospects.

31. To help reduce the risk to students in the event of closures, the new regulatory framework includes for the first time, a requirement for higher education providers in the Approved and Approved (fee cap) categories to develop and publish student protection plans. These plans will set out in detail what students can expect to happen in the event of course, campus or departmental closure, or if an institution exits the market. Student protection plans must be approved by the OfS, and be easily accessible to current and future students.
32. A further condition for registration with the OfS will require providers to publish information about their arrangements for students transferring either between courses at the same institution, or to a different institution altogether. Removing the barriers that exist for students - providing clear information on how a student can transfer and helping to make the process easier - will strengthen competition within the sector, providing more opportunities for students to protect their interests by supporting flexible learning. This in turn will help incentivise providers to not just focus on student recruitment, but also their retention once at an institution, further rebalancing the student provider relationship, while also increasing competition in HE and improving overall student outcomes.

## **Student contracts**

33. To ensure they receive value for money, it is critical that students know their rights and are able to exercise them effectively. Accordingly, one of the conditions for registration with the OfS will be that HE providers must be able to demonstrate, when 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.
34. Providers should ensure that students have access to clear, accurate, specific and timely information at all stages of their higher education experience, including details on course content and structure and the total course costs. Providers should make students aware of which terms make up their contracts with providers and these should be understandable, fair and transparent, and not unfairly balanced towards the provider. In the event that things do go wrong and the student's experience does not match with what was advertised, students should be able to access their provider's clear and fair complaint handling processes and practices.
35. In addition, the OfS will seek to take further action to address value for money concerns relating to the student's higher education experience. This could include further consultation on student contracts and student consumer rights, for example on whether the OfS should play an enforcement role, and whether students would benefit from the use of sector wide model for contracts with providers.

## The benefits of a new regulatory framework

36. The new risk-based regulatory framework will promote greater competition, choice and participation in the HE sector; while the OfS will also have a focus on championing freedom of speech across the HE sector. This will help deliver better value for money to students and taxpayers, maintain HE's role as an engine of social mobility, and protect the right of students to explore and express their opinions throughout their qualification.

### Delivering better value for money for students and taxpayers

37. OFFA data suggests that for the academic year 2017/18, many students can expect to be paying fees close or equal to the fee cap. Around 70% of HE providers with an access agreement intend to charge a maximum of £9,250 for at least one of their courses while 18% plan to charge the maximum £9,250 for all their courses<sup>15</sup>.

38. Value for money is an area of particular concern in higher education. The Higher Education Policy Institute Student Survey has shown a marked decrease in students that find their course to be good or very good value for money – from 53% in 2012 to 35% in 2017. At the same time, the proportion of students who think their course is poor or very poor value for money has increased from 18% in 2012 to 34% in 2017<sup>16</sup>. The new regulatory framework will help ensure that students achieve better value for money by incentivising HE providers to improve the student offer by raising the quality of teaching and the wider academic experience, so that students can achieve the best possible outcomes.

39. The new regulatory system will also help ensure that the interests of taxpayers who underwrite the system continues to be protected in the years ahead. At the end of financial year 2016/17, there was £89.3 billion<sup>17</sup> outstanding in English student loans. As such, the value for money of HE for the taxpayer and the student is increasingly important. Improving the academic journey for students can have a positive impact on the Exchequer, as lower drop-out rates and better graduate outcomes can mean greater and faster repayments of loans, thereby bringing down the RAB charge<sup>18</sup> and increasing tax revenue as a result of graduates being successfully placed in better paid jobs.

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<sup>15</sup> OFFA, 2016, '2017-18 access agreements: institutional expenditure and fee levels', <https://www.offa.org.uk/wp-content/uploads/2016/09/2017-18-access-agreement-decisions.pdf>

<sup>16</sup> HEPI, 2017, 'Student Academic Experience Survey', <http://www.hepi.ac.uk/wp-content/uploads/2017/06/2017-Student-Academic-Experience-Survey-Final-Report.pdf>

<sup>17</sup> Student Loans Company, 2017, <https://www.slc.co.uk/official-statistics/student-loans-debt-and-repayment.aspx>

<sup>18</sup> The Resource Accounting and Budgeting (RAB) charge is the estimated cost to Government of borrowing to support the student finance system based on future loan write-offs and interest subsidies in net present value terms. For convenience, we express these costs as a proportion of the initial loan outlay.

## Maintaining the HE sector's role as an engine of social mobility

40. Higher education statistics show that the percentage of full time undergraduate entrants from low participation neighbourhoods (POLAR3) in 2015/16 varied significantly across English HEIs. The percentage of young full time undergraduate entrants from under-represented groups at each institution varied from under 22% to over 30%, while the percentage for mature students from disadvantaged areas ranged from 0% to over 26%<sup>19</sup>. On top of this, (POLAR3) quintile 1 students are less than half as likely to attend higher tariff institutions as their advantaged (POLAR3) quintile 5 counterparts<sup>18</sup>.
41. UCAS data also shows that students from the most disadvantaged groups are more likely to attend low and medium-tariff institutions, as are students from Black, Asian and Mixed ethnic groups<sup>20</sup>. Data from the HESA Student Record<sup>21</sup> shows that non-continuation rates among the broad ethnic groups has either decreased marginally (Black, Mixed and Asian groups) or stayed roughly the same over the last six years (for example the White ethnic group); only the Chinese ethnic group has witnessed a continuous drop in rates over this period.
42. The lowering of barriers to entry into the higher education sector and the creation of a level playing field should be disproportionately beneficial for students from low participation backgrounds. In particular, greater competition should lead to providers being more responsive to the different needs of prospective students, for example by offering more flexible study routes for those students who may be geographically less mobile and have more limited access and diversity of HE provision.
43. The greater emphasis on access and participation statements, as well as plans supported by grant funding for those providers that are eligible, will help create new, easier to access opportunities for students from disadvantaged and underrepresented groups, enabling them to attend the most selective higher tariff institutions.

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<sup>19</sup> HESA, 2017, 'UK Performance Indicators 2015/16: Widening Participation', <https://www.hesa.ac.uk/data-and-analysis/performance-indicators/widening-participation>

<sup>20</sup> UCAS, 2016, 'Equality and entry rates data explorer', available here: <https://www.ucas.com/corporate/data-and-analysis/ucas-undergraduate-releases/equality-and-entry-rates-data-explorer>

<sup>21</sup> HEFCE, 2017, 'Non-continuation rates: trends and profiles', <http://www.hefce.ac.uk/analysis/ncr/>



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