



Home Office

Tier 4 of the Points Based System: Guidance for Sponsors

Document 4: Higher Education regulatory reform

Version 04/2018 - This guidance is to be used from 03 April 2018

This guidance covers:

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

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

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Glossary

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

Phrase	Meaning
Approved Provider	A Tier 4 sponsor which has been registered by the OfS in either the 'Approved' or 'Approved (fee cap)' categories, as defined in the OfS regulatory framework .
BCA Core Requirements	The requirements set out in paragraph 2.12 of Document 3 of the Tier 4 Guidance for Educators .
English Higher Education Provider	Has the same meaning as defined in HERA and the OfS regulatory framework .
HERA	The Higher Education and Research Act 2017 .
OfS	The Office for Students (OfS) is the independent regulator of English Higher Education Providers.

Changes since last publication

Current paragraph number	Previous paragraph number	Changes made
		This is new guidance.

1. Introduction

- 1.1 This guidance sets out the policy on how the Higher Education regulatory reforms and the creation of the Office for Students from April 2018 will affect prospective, new and current Tier 4 sponsors.
- 1.2 This guidance is supplemental to the [Tier 4 Guidance for Educators](#), which sets out the requirements for education providers wishing to apply for, and hold, a licence to sponsor international students to come to the UK under Tier 4 of the Points Based System. Document 1 covers applying for a Tier 4 licence, Document 2 covers sponsorship duties, and Document 3 covers compliance assessments and sanctions for non-compliance. Sponsors, and education providers who would like to apply for a Tier 4 licence, should read all three documents alongside this guidance and ensure they understand them and comply with them.

2. Higher Education reform

This section gives information on:

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

Office for Students

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

Providers which are out of scope of HERA

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

Devolved Administrations

- 2.6 As education is a devolved matter, the OfS will not regulate higher education provision in the Devolved Administrations (Scotland, Wales and Northern Ireland).
- 2.7 New and current Tier 4 providers in the Devolved Administrations will therefore remain subject to the Educational Oversight requirements set out in Document 1 of the [Tier 4 Guidance for Educators](#).

3. Impact of Higher Education Reform on Tier 4 sponsors

This section gives information on:

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

Guiding principles

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

Educational Oversight from OfS

- 3.3 English Higher Education Providers must register with the OfS to provide Tier 4 Educational Oversight. This includes:
 - Higher education institutes (HEIs)
 - Publicly funded colleges providing higher education
 - Private providers which provide higher education, including:
 - alternative providers
 - embedded colleges offering pathway courses, integrated programmes or set up as a joint venture
 - private providers which have entered into franchise or validation arrangements under the 'Sites and teaching partnerships' section in Document 1 of the Document 1 of the [Tier 4 Guidance for Educators](#).
- 3.4 The OfS will provide Educational Oversight at provider level. This means that where an English Higher Education Provider offers courses at RQF level 3 in addition to those at RQF level 4 and above, the Educational Oversight from OfS will cover all its education provision. The provider will not require separate Educational Oversight from another body for its RQF level 3 provision. This does not override any separate requirements for statutory education inspection, for example from Ofsted. Where an English Higher Education Provider offering higher education also requires a statutory education inspection from Ofsted, it must meet the required standard in that inspection in addition to being registered as an Approved Provider with the OfS, as set out in Document 1 of the [Tier 4 Guidance for Educators](#).

- 3.5 The provider level Educational Oversight provided by OfS does not override the requirement for each embedded college offering pathway courses, integrated programmes or set up as a joint venture to have its own separate Educational Oversight.
- 3.6 Any provider which is outside the scope of the OfS, because it does not meet the definition of an English Higher Education Provider, must continue to gain and maintain Educational Oversight from the relevant body specified in Document 1 of the [Tier 4 Guidance for Educators](#).

Prospective Tier 4 sponsors

- 3.7 Prospective Tier 4 sponsors which are English Higher Education Providers may apply to join the OfS register as soon as OfS starts accepting applications. Once they have become Approved Providers, they can rely on their OfS Educational Oversight in support of a Tier 4 sponsor licence application. To gain a Tier 4 licence, the provider must meet all the relevant requirements set out in the [Tier 4 Guidance for Educators](#).
- 3.8 If the Tier 4 licence application is successful, the provider will become a Tier 4 probationary sponsor and may commence sponsoring students and accruing its track record of immigration compliance. The sponsor won't gain the full Tier 4 privileges until it has successfully established the required [track record of immigration compliance](#).

Current Tier 4 sponsors

- 3.9 Current Tier 4 sponsors which are English Higher Education Providers must gain OfS registration before 1 August 2019 to maintain their Educational Oversight.
- 3.10 Such providers which fail to apply to the OfS, or do not gain the required OfS registration before 1 August 2019, will no longer have Educational Oversight from that date. They will therefore lose the ability to sponsor new students, in accordance with the Educational Oversight policy, and their CAS allocation will be set to zero. Where applicable, the provider will be made a Legacy sponsor. They will not be able to sponsor new students under Tier 4 until they gain OfS registration.

Transitional arrangements

- 3.11 There is no Tier 4 policy requirement for current Tier 4 sponsors which are English Higher Education Providers to apply for OfS registration as soon as the OfS starts accepting applications on 3 April 2018.
- 3.12 Current Tier 4 sponsors, which are English Higher Education Providers and whose Educational Oversight requires renewal before 1 August 2019, may transition to Educational Oversight provided by OfS on any date prior to 1

August 2019, which is the date that the new framework comes fully into force.

- 3.13 All Tier 4 sponsors must however maintain Educational Oversight throughout the period of their licence, so Tier 4 sponsors which are English Higher Education Providers will need to ensure that there is no gap in their Educational Oversight during the transitional period. This means that such sponsors must be registered with the OfS before 1 August 2019, since their current Educational Oversight will no longer be available after that date. Such sponsors must therefore apply to the OfS by 15 May 2019 in order to receive a registration decision by 1 August 2019. Tier 4 sponsors which transition to OfS registration before 1 August 2019 will not be able to offer any [additional privileges](#) to their students prior to 1 August 2019. Providers' current privileges are not affected.
- 3.14 Sponsors which are English Higher Education Providers should check the OfS regulatory framework to find out whether they need to register with the OfS by a particular date prior to 1 August 2019 for other reasons, such as to maintain access to funding.

4. The full privileges of Tier 4

This section gives information on:

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

Full privileges

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

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

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

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

4.4 Full details of the privileges will be incorporated into a future set of Immigration Rules changes.

Requirements for gaining the full privileges

4.5 Any education provider that registers with the Office for Students (OfS) as an Approved Provider, and has a track record of compliance, as defined in this guidance, will benefit from the full privileges of Tier 4 from 1 August 2019. This includes eligible students sponsored by the provider having permission to work and eligible post-graduate students being allowed to bring their dependants.

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

- immigration compliance

- Educational Oversight

Requirements for establishing the track record of immigration compliance

- 4.7 Sponsors must already demonstrate that they are compliant with their sponsorship duties, by passing a Basic Compliance Assessment (BCA) every 12 months, as set out in Document 3 of the [Tier 4 Guidance for Educators](#). The BCA will be used to determine whether an Approved Provider has a satisfactory track record of immigration compliance.
- 4.8 A Tier 4 sponsor which is an Approved Provider must pass its BCA, as set out in Document 3 of the [Tier 4 Guidance for Educators](#) for four consecutive years before gaining the full privileges of Tier 4.
- 4.9 When a provider first becomes a Tier 4 sponsor, it does so with probationary sponsor status and does not become a full Tier 4 sponsor until it has passed its first BCA. The year spent as a probationary sponsor will count towards the four-year track record, provided the sponsor passes its first BCA.
- 4.10 We will revoke a sponsor's Tier 4 licence if it fails its BCA. If a sponsor's licence is revoked, any time that it accrued towards the four-year track record of compliance will be lost. The provider will need to reapply for a new Tier 4 licence, in accordance with the Tier 4 sponsorship policy, if it wishes to regain its licence. If it is granted a new licence, it will need to establish a new four-year track record of immigration compliance before gaining access to the Tier 4 privileges.
- 4.11 If a Tier 4 sponsor which is subject to a discretionary assessment, as defined in paragraphs 2.24 to 2.28 of Document 3 of the [Tier 4 Guidance for Educators](#), passes its BCA on a discretionary basis, that BCA pass will count towards the four-year track record.
- 4.12 In the extremely rare event that, on an exceptional basis, a sponsor is allowed to retain its licence despite failing to meet BCA Core Requirements and being ineligible for a discretionary assessment, as defined in paragraphs 2.24 to 2.28 of Document 3 of the [Tier 4 Guidance for Educators](#), any time that it accrued towards the four-year track record of compliance prior to failing its BCA Core Requirements will be lost. It will need to establish a new four-year track record of immigration compliance, starting from the date that its next BCA assessment period commences, before gaining access to the Tier 4 privileges.

Requirements for establishing the track record of Educational Oversight

- 4.13 Tier 4 sponsors which are Approved Providers must also maintain their

Educational Oversight consistently for four consecutive years, to show that they are compliant in terms of educational quality, before gaining the privileges. If a sponsor fails its Educational Oversight (including from Ofsted, if it is subject to statutory inspection) at any time during the four-year period, it will not gain access to the full privileges of Tier 4 until it has maintained its Educational Oversight for a four-year period following the date on which its Educational Oversight body notified the sponsor that it had failed its Educational Oversight. This applies even if the sponsor had previously passed its BCA for four consecutive years.

- 4.14 Providers which are subject to Educational Oversight from more than one Educational Oversight body must maintain Educational Oversight from each body. Approved Providers which change their Educational Oversight body during the four-year period may aggregate the time accrued under each body, provided that the Educational Oversight was maintained throughout without any breaks in continuity. If there was a break in the continuity of Educational Oversight, the four-year period will start from when Educational Oversight was re-established.

Action plans: effect on track record

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

Gaining the full privileges

- 4.16 Tier 4 sponsors which are Approved Providers will gain the full privileges of Tier 4 from the date on which they establish a four-year track record of compliance, as defined in this guidance.
- 4.17 UKVI will notify Tier 4 sponsors when they have satisfactorily established the track record of compliance and gained access to the full privileges.
- 4.18 The conditions of leave conferred by the full privileges will apply to new students to whom the Tier 4 sponsor issues a CAS, where the student's CAS is recorded as used by UKVI on or after the date on which the sponsor gains the full privileges. Students whose CAS were marked as used before the date on which the sponsor gained the full privileges will be unaffected and their current conditions of leave will not change as a result of the sponsor gaining

the full privileges.

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

Current Tier 4 sponsors

- 4.22 Current Tier 4 sponsors which already have access to the full Tier 4 privileges prior to the creation of the OfS will retain them, provided they continue to have a Tier 4 licence. Sponsors which are English Higher Education Providers must gain OfS registration as Approved Providers by 1 August 2019 to enable them to continue sponsoring students.
- 4.23 Current Tier 4 sponsors which register with the OfS as Approved Providers and do not currently have access to the full privileges will gain them from 01 August 2019 if they have the required track record of immigration compliance, as defined in this section of the guidance, on that date.
- 4.24 Current Tier 4 sponsors which are English Higher Education Providers, but do not have access to the full privileges and do not have the required four-year track record of compliance on 1 August 2019, will not gain full access to the privileges until they have gained the required four-year track record. The time that such a sponsor has already accrued towards the four-year track record will be counted towards the total time required. For example, if such a Tier 4 sponsor has been on the Tier 4 register for three years, and has passed its first three BCAs, it only needs to pass one further BCA to establish the four-year track record of compliance, provided it has also satisfactorily maintained its Educational Oversight throughout that time. Any time which has already been spent on an action plan will not count towards the four-year track record.