

**Consultation**

**Office for  
Students**

The logo for the Office for Students, featuring a dark blue square with a yellow square in the top right corner containing the letters 'OfS' in white.

**OfS**

## **Consultation on regulating quality and standards in higher education**

**This consultation runs from 17 November  
2020 to 12 January 2021.**

**Reference** OfS 2020.50

**Enquiries to** [regulation@officeforstudents.org.uk](mailto:regulation@officeforstudents.org.uk)

**Publication date** 17 November 2020

# Consultation on quality and standards in higher education: Raising the bar

The Office for Students is consulting on its approach to regulating quality and standards in higher education. Since 2018, our focus has been on assessing providers seeking registration and we are considering whether and how we should develop our approach now that most providers are registered. This consultation is taking place at an early stage of policy development and we would like to hear your views on our proposals.

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Timing of consultation	Start: <b>17 November 2020</b> End: <b>12 January 2021</b>
Who should respond?	Anyone with an interest in the regulation of quality and standards in the higher education sector.
How to respond	Please respond by <b>12 January 2021</b> . Use the online response form available at <a href="https://survey.officeforstudents.org.uk/s/qualityandstandards/">https://survey.officeforstudents.org.uk/s/qualityandstandards/</a>
Enquiries	Email <a href="mailto:regulation@officeforstudents.org.uk">regulation@officeforstudents.org.uk</a> Alternatively, call our regulation helpline on 0117 931 7305.

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The Office for Students is the independent regulator for higher education in England. We aim to ensure that every student, whatever their background, has a fulfilling experience of higher education that enriches their lives and careers.

### **Our four regulatory objectives**

All students, from all backgrounds, and with the ability and desire to undertake higher education:

- are supported to access, succeed in, and progress from, higher education
- receive a high quality academic experience, and their interests are protected while they study or in the event of provider, campus or course closure
- are able to progress into employment or further study, and their qualifications hold their value over time
- receive value for money.

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## About this consultation

- In response to the coronavirus pandemic, we paused some of our regulatory requirements while higher education providers adapted rapidly to the environment. We now plan a phased resumption. However, we do not intend to reinstate our requirements exactly as before. Instead, we will draw on our experience of the last two years and target our work to ensure that it is focused where it is most needed. This revised approach will reflect the commitment we made in the regulatory framework that providers that do not pose specific increased risk should have less regulatory burden, now that the regulatory framework is established.
- Quality and standards, and equality of opportunity, are at the heart of our work. The other regulatory requirements we impose – for consumer and student protection, financial viability and sustainability, management and governance, and so on – underpin them. That structure frames this consultation.
- We undertook a substantial consultation in 2019 to put in place new rigorous and ambitious requirements for access and participation plans. We now doing the same for quality and standards, proposing new minimum baseline requirements and a new approach to ensuring these requirements are met.
- This consultation sets out the background to our proposals, the reasons we are proposing to make changes and what we expect those changes to achieve. In formulating them, we have had regard to our general duties under section 2 of the Higher Education and Research Act 2017 (HERA), statutory guidance issued by the Secretary of State, the Regulators' Code, and the public sector equality duty, as set out in Annexes G and H. We have also had regard to advice from our Quality Assessment Committee, which is convened under section 24 of HERA.
- The consultation questions are listed in full in Annex E.

For more information about our approach to regulation, see the regulatory framework at [www.officeforstudents.org.uk/advice-and-guidance/regulation/the-regulatory-framework-for-higher-education-in-england/](http://www.officeforstudents.org.uk/advice-and-guidance/regulation/the-regulatory-framework-for-higher-education-in-england/).

## Who should respond to this consultation?

- We welcome responses from anyone with an interest in the regulation of English higher education.
- We are particularly (but not only) interested in hearing from **students and their representatives**, and **higher education providers that are registered or applying for registration**. These are the groups that may be most affected by our proposals. We welcome the views of all types and sizes of provider.

## How to respond

The consultation closes at **2359 on 12 January 2021**.

Please submit your response by completing the online form at <https://survey.officeforstudents.org.uk/s/qualityandstandards/>

If you require this document in an **alternative format**, or need assistance with the online form, please contact [regulation@officeforstudents.org.uk](mailto:regulation@officeforstudents.org.uk). **Please note:** this email address should **not** be used for submitting your consultation response.

## Consultation principles

- We are running this consultation in accordance with the government's consultation principles<sup>1</sup>.
- At the Office for Students (OfS) we are committed to taking equality and diversity into account in everything we do. We have a legal obligation to show due regard to the Public Sector Equality Duty.

## How we will treat your response

We will summarise or publish the responses to this consultation on the OfS website (and in alternative formats on request). This may include a list of the providers and organisations that respond, but not personal data such as individuals' names, addresses or other contact details. If you want the information that you provide to be treated as confidential, please tell us but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

The OfS will process any personal data received in accordance with all applicable data protection laws (see our privacy policy<sup>2</sup>).

We may need to disclose or publish information that you provide in the performance of our functions, or disclose it to other organisations for the purposes of their functions. Information (including personal data) may also need to be disclosed in accordance with UK legislation (such as the Freedom of Information Act 2000, Data Protection Act 2018 and Environmental Information Regulations 2004).

## Next steps

Subject to the representations received as a result of this consultation, we intend to make a decision on whether and how to take forward the proposals. If we do decide to take forward the proposals we would expect to conduct a second consultation on more detailed policy proposals that may include proposed changes to the regulatory framework.

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<sup>1</sup> See <https://www.gov.uk/government/publications/consultation-principles-guidance>.

<sup>2</sup> Available at [www.officeforstudents.org.uk/ofs-privacy/](http://www.officeforstudents.org.uk/ofs-privacy/).

## Introduction

1. The OfS's primary aim is to ensure that English higher education is delivering positive outcomes for students – past, present and future. Our regulatory objectives reflect the things that matter most to students: high quality courses, successful outcomes, and the ongoing value of their qualifications. We use the tools in the regulatory framework to mitigate the risk that these regulatory outcomes are not delivered in practice for students from all backgrounds.
2. The conditions of registration contained in the regulatory framework are designed to ensure a minimum baseline of protection for all students and the taxpayer. Beyond this minimum, we encourage choice for students and innovation by autonomous providers free to pursue excellence as they see fit. The proposals in this consultation are consistent with this established regulatory approach.
3. Protecting and promoting quality and equality of opportunity is at the heart of our work. When a student embarks on a higher education course it has the potential to be a life-transforming event – an enriching academic experience that paves the way for rewarding options in the labour market and a fulfilling life. Students pay a significant price for these opportunities, through their time and effort, as well as in financial terms. This is why the OfS is focused on ensuring through our regulation of quality and standards that all students, whatever their background and characteristics, can have confidence that they will receive a high quality higher education and successful outcomes. At the same time, we are taking steps through our regulation of access and participation to reduce the gaps in equality of opportunity between students from underrepresented groups<sup>3</sup> and other students, before, during and beyond their time in higher education.
4. Our regulatory approach is designed to ensure that our regulation of quality and standards, and of access and participation, is mutually reinforcing for the benefit of students. We set a minimum baseline requirement for quality, which includes a minimum level for student outcomes. Our intention in doing so is to be clear that all students are entitled to the same minimum level of quality. We also expect higher education providers to improve access to higher education for the most underrepresented groups and to reduce the gaps between the outcomes achieved for these students and the outcomes achieved for other groups. We do not accept that students from underrepresented groups should be expected to accept lower quality, including weaker outcomes, than other students. We therefore do not bake their

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<sup>3</sup> We use the term 'students from underrepresented groups' throughout this consultation. It includes all groups of potential or current students where the OfS can identify gaps in equality of opportunity in different parts of the student lifecycle. In determining the groups falling within this definition, the OfS has given due regard to students who share particular characteristics that are protected under the Equality Act 2010 as well as students who are otherwise underrepresented or disadvantaged. When referring to underrepresented groups, the OfS considers this to include, among others, students from deprived areas, areas of lower higher education participation, or both; some black, Asian and minority ethnic students; mature students; and disabled students (whether or not they are in receipt of Disabled Students Allowance). There are some student groups with protected characteristics under the Equality Act 2010 where the OfS has been prevented from determining whether they are underrepresented at different points of the student lifecycle, because either: data is collected at a national level but there are gaps in disclosure and absence of comprehensive data (for example in relation to religion or belief, sexual orientation and gender reassignment); or data is not collected at a national level (for example in relation to marriage and civil partnership, and pregnancy and maternity).

disadvantage into the regulatory system by setting lower minimum requirements for providers that typically recruit these types of students.

5. For this reason, in assessing a provider's performance we focus on performance shown in absolute rather than benchmarked indicators, although we will take a provider's context into account in reaching our judgement to ensure we have properly interpreted its absolute performance.
6. We recognise that this presents a challenge for higher education providers: if they are to recruit students from underrepresented groups, they must do so having understood the commitment they are making to supporting these students to succeed. Many universities and colleges relish and deliver on this challenge. However, other providers are not yet meeting this challenge and, while they may provide opportunities to access higher education for such students, we also see low continuation rates and disappointing levels of progression to managerial and professional employment or higher-level study, suggesting that students may not be being supported to succeed. This is where our regulatory attention needs to focus.
7. Because we set a minimum baseline for quality and standards for all providers to meet, we can adopt a risk-based approach to monitoring ongoing compliance. Our approach enables us to identify those providers that are most at risk of falling below the minimum baseline, and then intervene to ensure this does not happen. This means that the highest quality providers that deliver high quality courses and support their students to achieve successful outcomes, including students from underrepresented groups, should see less regulation in relation to our quality and standards requirements. Conversely, those providers performing below the minimum baseline are likely to experience significant regulatory attention, including through the use of the OfS's enforcement powers.
8. This consultation relates to the OfS's quality and standards functions. The proposals are designed to ensure that our approach to regulation maintains and strengthens the English higher education sector and its international reputation. In particular, now the regulatory regime is established, we propose to set higher minimum baseline requirements for quality. It is important that students, from the UK and beyond, as well as the wider public and the taxpayers who subsidise their education, can have confidence in the quality of the courses offered by English higher education providers and that they represent value for money.
9. The consultation therefore makes preliminary policy proposals about the minimum baseline requirements we set for higher education providers, and our approach to ensuring these requirements are met. In summary, the proposals:
  - a. Define 'quality' and 'standards' more clearly for the purpose of setting minimum baseline requirements for all providers (see paragraphs 29 to 54, Annex A and consultation questions 1a-c). This includes:
    - i. Defining 'quality' to include the outcomes delivered for students, and enable consideration of quality for different modes and levels of provision and for different groups of students.
    - ii. Defining 'standards' to include new sector-recognised standards for the classifications awarded for undergraduate degrees.

- iii. Expressing some initial registration requirements differently from the equivalent ongoing requirement to ensure our regulatory approach reflects the context for providers that may not yet have delivered higher education.
  - iv. Clarifying the way in which our regulation of quality and standards applies to partnership arrangements and transnational education (TNE).
- b. Set numerical baselines for student outcomes and assess a provider's absolute performance in relation to these (see paragraphs 55 to 70, Annex B and consultation questions 2a-h). This includes:
- i. Setting higher, more challenging, numerical baselines that apply to each indicator and all providers. We propose that numerical baselines will not be adjusted to take account of differences in performance between demographic groups.
  - ii. Considering a provider's performance at a more granular level, including consideration of performance at subject level, in courses delivered through partnerships, and for students studying outside the UK.
  - iii. Considering a provider's context to ensure we have properly interpreted its absolute performance.
  - iv. Improving transparency in relation to the indicators used to regulate student outcomes.
- c. Clarify the indicators and approach used for risk-based monitoring of quality and standards (see paragraphs 72 to 78 and consultation question 3).
- d. Clarify our approach to intervention and our approach to gathering further information about concerns about quality and standards (see paragraphs 86 to 106 and consultation question 4).

## **Current approach to the regulation of quality and standards**

10. Sections 5 and 13 of HERA permit the OfS to impose conditions of registration relating to quality and standards. This means that we are able to set regulatory requirements for quality and standards for providers seeking to register with the OfS, and then use the enforcement powers in sections 15 to 19, 42 to 48 and 58 to 59 of HERA where a registered provider does not meet these requirements on an ongoing basis.
11. The OfS decided in 2018 to impose conditions relating to quality and standards. These conditions are set out in the regulatory framework and are referred to collectively as the 'B conditions'. They are both initial and ongoing conditions of registration, which means that they apply to providers seeking registration and then on an ongoing basis for registered providers.
12. There is a further ongoing condition of registration (B6) that requires a registered provider with more than 500 students on higher education courses to participate in the Teaching Excellence and Student Outcomes Framework (TEF). Consideration of this condition is not included in the current consultation and is not included when this consultation refers to the 'B conditions'. This is because, while it relates to quality, condition B6 does not itself set out a baseline for a provider's performance in the same way as the other B conditions.
13. The wording of the current B conditions, which are the subject of these proposals, is:

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

**Condition B2:** The provider must provide all students, from admission through to completion, with the support that they need to succeed in and benefit from higher education.

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

**Condition B4:** The provider must ensure that qualifications awarded to students hold their value at the point of qualification and over time, in line with sector recognised standards.

**Condition B5:** The provider must deliver courses that meet the academic standards as they are described in the Framework for Higher Education Qualification (FHEQ) at Level 4 or higher.

14. The OfS's regulatory approach is designed to be predominantly principles-based. Our regulatory requirements are expressed as broad principles rather than as narrow, prescriptive rules. This is because the higher education sector in England is complex and diverse. Imposing a narrow rules-based approach risks creating a compliance culture that stifles that diversity and discourages innovation, preventing the sector from flourishing. In October 2020, we published an Insight brief<sup>4</sup>, which describes principles-based regulation in more detail and identifies some of the benefits and challenges of such an approach.
15. This principles-based approach is particularly relevant for the current B conditions. For example, we do not say how many teachers there should be in a chemistry department of 650 undergraduate students, or what qualifications those teachers should hold, or how they should teach and assess organic chemistry. Instead we express regulatory requirements in terms of the broad outcomes we wish to see. For example, a course (in chemistry or anything else) must be well-designed, provide a high quality academic experience, and deliver successful outcomes for students from all backgrounds. A provider is expected to determine how best to deliver these things in its own context. The guidance that accompanies the B conditions in the regulatory framework includes a non-exhaustive list of behaviours that may indicate compliance or non-compliance with each condition, and the intention is that this assists providers in making judgements about their own compliance, but does not determine how they should comply.
16. The conditions set out the minimum level, or 'baseline', that a provider must achieve and demonstrate to remain registered with the OfS. We do not regulate through the B conditions in a way that seeks to drive continuous improvement. Conditions B1, B2, B4 and B5 set out a qualitative baseline – they require, for example, well-designed courses that provide a high quality academic experience. Condition B3 includes a more quantitative baseline – it requires successful outcomes for all of a provider's students. These minimum baselines act as a consumer protection mechanism that ensures that all higher education providers regulated by the OfS offer a minimum level of quality and performance for students.

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<sup>4</sup> See 'A matter of principles: Regulating in the student interest' (Insight brief 7, 6 October 2020), available online at [www.officeforstudents.org.uk/publications/a-matter-of-principles-regulating-in-the-student-interest/](http://www.officeforstudents.org.uk/publications/a-matter-of-principles-regulating-in-the-student-interest/).

17. Above these minimum baselines, providers, as autonomous institutions, are free to pursue innovation and excellence as they see fit. We use the TEF to promote excellence in teaching and outcomes beyond the minimum baseline. We expect to consult on our future approach to the TEF after the government has published the independent Pearce review and its response. Our intention is to ensure that our approach to the minimum baselines contained in the B conditions and the above-baseline assessment undertaken for the TEF combine to produce an overall approach to quality that delivers our regulatory objectives and is coherent. Our view of the relationship between the TEF and the approach proposed in this consultation for the baseline B conditions is described further in Annex D.

## **The reasons for this consultation**

18. Since April 2018, we have made assessments of providers seeking registration in relation to the initial B conditions as part of the registration process. We refused registration to a number of providers because we did not consider that they satisfied our quality requirements. We also imposed post-registration requirements on a number of providers because we considered the risk of a future breach of one or more of the B conditions was increased. Subsequently, we have reviewed the action plans produced by these providers and considered the outcomes of reviews for some of them by the designated quality body<sup>5</sup>. We have also considered cases where our analysis suggests that there is evidence of unexplained grade inflation in the classification of undergraduate degrees.
19. This regulatory activity has informed our understanding of the way in which our quality and standards requirements are defined, how they work in practice, the protection they provide to students, and the challenges some providers have experienced in understanding and meeting them.
20. In particular, we have recognised that our approach to regulating student outcomes, as set out in condition B3, requires further consideration. This is because we set our requirements during the initial registration period in a way that meant we accepted performance from some providers that was of concern. While our assessment considered variation within a provider's aggregate performance at different levels and modes of study, we did not look at variation in other areas, such as at subject level. We also recognise that it would be helpful to consult now on the approach we use to make judgements about whether condition B3 is satisfied by an individual provider.
21. We have drawn on this experience in forming our views about the appropriate next steps for our approach to regulating quality and standards.
22. More recently, not least as a result of the disruption caused by the coronavirus pandemic, we have considered whether we need to rebalance our approach to be better able to anticipate risks to quality and standards, either for individual providers or for the sector as a whole. Our focus to date has generally been on student outcomes, assessed using indicators constructed from comprehensive retrospective data. Requiring a minimum level of outcomes for students from all backgrounds will remain a central part of our regulatory approach, but we now want to

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<sup>5</sup> The designated quality body is an organisation designated by the Secretary of State under paragraph 3 of schedule 4 of HERA. The Quality Assurance Agency for Higher Education is currently the designated quality body.

ensure that our monitoring approach allows us to recognise signs of badly designed or delivered courses, or weakness in academic support, or digital poverty that in turn will lead to poor outcomes. We also want to embed the use of indicators of future risk that may arise from the operating context for an individual provider.

23. Our experience of regulating over the past two years has also allowed us to identify areas in which high quality providers have not yet understood the significant latitude available to them in a principles- and risk-based regulatory environment. In our proposals we are reinforcing the fact that our approach of regulating through minimum baseline requirements for quality and standards means that the highest quality providers should normally expect to meet these comfortably, and should not therefore need to expend significant effort to demonstrate that requirements are satisfied.
24. We have also considered where our approach may be imposing regulatory or bureaucratic burden that is not adding sufficient value for providers or students. We have previously signalled an intention to minimise our use of enhanced monitoring requirements<sup>6</sup> and our proposals confirm this direction of travel. More generally, the proposals in this consultation are designed to focus regulatory attention where it is needed. This risk-based approach means that we will develop our monitoring activities to allow us to understand the context for an individual provider and so anticipate risks to the quality and standards of its courses. This will allow us to intervene in a targeted way in response to clear regulatory risk.
25. We recognise that a monitoring system underpinned by data means that providers will need to continue to submit data on a regular basis. We remain conscious of the burden that data returns create and our proposals seek to balance that against the benefits of a risk-based regulatory system. We are also seeking views on where we might go further in reducing regulatory burden, including data burden, provided that we are able to continue to protect students from low quality courses, weak outcomes, and qualifications that are not reliably awarded.

## Our proposals

26. This consultation is taking place at an early stage of policy development and we are using it to invite views about our proposed general approach to defining and regulating quality and standards. Subject to the responses to this consultation and any final decisions about these proposals, we would expect to consult further on more detailed proposals. Without prejudging the outcome of the current consultation, we would expect further consultation to include proposals for:
  - a. New B conditions and associated guidance as part of the regulatory framework.
  - b. A detailed approach to constructing indicators and setting numerical baselines for student outcomes, proposals for the level at which these should be set, and the way in which contextual factors will be taken into account in our assessment of a provider's performance.
  - c. More detailed proposals for our approach to monitoring and intervention.

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<sup>6</sup> See [www.officeforstudents.org.uk/publications/update-on-the-office-for-students-approach-to-regulation-and-information-about-deadlines-for-data-returns/](http://www.officeforstudents.org.uk/publications/update-on-the-office-for-students-approach-to-regulation-and-information-about-deadlines-for-data-returns/)

27. We consider that the proposed approach is a necessary and proportionate means to:

- a. Ensure that all students are protected from providers delivering courses and outcomes below a minimum baseline level of quality, or awarding qualifications that do not meet sector-recognised standards. All students, including those from underrepresented groups and with protected characteristics, should have this protection regardless of what or where or how they study.
- b. Provide clarity to providers, students and others about the regulatory requirements in place for quality and standards and ensure that there is public confidence, in the UK and internationally, in higher education qualifications and the quality of courses that lead to them.
- c. Ensure that the OfS can identify compliance concerns about quality and standards, and intervene rapidly to investigate and, if necessary, resolve these.
- d. Provide a clear mechanism through which information can be made available to students and others about providers that are not meeting minimum baseline requirements for quality or standards.
- e. Ensure that the regulatory burden in relation to quality and standards is minimised for high quality providers not at increased risk of a breach of any of the B conditions.

28. Our four proposals are set out in the sections that follow.

## **Proposal 1: Define ‘quality’ and ‘standards’ more clearly for the purpose of setting the minimum baseline requirements for all providers**

### **What are we proposing and why?**

29. We propose to define ‘quality’ and ‘standards’ for the purpose of our regulation as set out in Table 1 in Annex A. We propose to use these definitions to express minimum baseline requirements for quality and standards in revised B conditions.
30. We propose to define our requirements through a combination of principles-based and more rules-based requirements and in terms of the outcomes the OfS expects a provider to deliver. Requirements would be expressed as minimum baselines that we would expect all providers to meet.
31. We are concerned with the quality and standards of higher education for ‘all students, from all backgrounds’. Where the proposed definitions for quality and standards in Table 1 make reference to ‘students’ we mean all types of students, whatever, wherever and however they study, and including those from groups underrepresented in higher education and with protected characteristics.
32. The proposed approach would mean that we would undertake a further, more detailed consultation on changes to the wording of the current B conditions and the regulatory framework. We would also propose to publish guidance underpinning revised B conditions as

part of the regulatory framework to respond to concerns expressed by some providers that they find it difficult to act with confidence in a principles-based regulatory environment.

33. Paragraphs 34 to 54 and Annex A provide more information about aspects of this proposal.

### Scope of our definitions of ‘quality’ and ‘standards’

34. We propose that, as now, all of a provider’s higher education courses<sup>7</sup> will be subject to the same definitions of ‘quality’ and ‘standards’, and therefore be subject to regulation on that basis, irrespective of where or how courses are delivered or who delivers them. This means, for example, that our proposed approach to regulating quality and standards covers all types of provision, including higher technical education and apprenticeships. We would also expect our proposed approach to apply to modular and flexible provision.

35. This means that our regulation of quality and standards would continue to apply to all of the students who are registered with a registered provider, taught by a registered provider or studying for an award of a registered provider. This includes UK-based and non-UK-based students, courses delivered through partnership arrangements both within the UK and internationally, and students on any course of higher education (whether that course is recognised for OfS funding purposes or not).<sup>8</sup> As is currently the case, each registered provider would need to ensure it satisfies all our regulatory requirements relating to quality and standards for all of its relevant partnership activity, regardless of whether it is a lead or delivery partner as defined in the regulatory framework.

36. We are proposing to continue to include non-UK based students because the regulatory framework says that the OfS will regulate the overseas activity of a registered provider ‘on the basis that the obligations of the registered provider extend to students for whom it is the

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<sup>7</sup> Section 83(1) of HERA defines a ‘higher education course’ as a course of any description mentioned in Schedule 6 to the Education Reform Act 1988.

<sup>8</sup> **Recognised** higher education courses are courses that are recognised for OfS funding purposes. See Annex B of the Higher Education Students Early Statistics survey guidance (available online at [www.officeforstudents.org.uk/publications/heses20/](http://www.officeforstudents.org.uk/publications/heses20/)) for more information, but in broad terms a course is recognised higher education for OfS funding purposes if it is:

- a. A course that is designated under the Education (Student Support) Regulations 2011.
- b. A ‘course of higher education’ as defined in Schedule 6 of the Education Reform Act 1988, other than one leading to a qualification in the Register of Regulated Qualifications.

Study for higher-education-level credit (rather than towards a specific qualification) is also **recognised** higher education if it meets the criteria in Schedule 6 of the Education Reform Act 1988 and either:

- a. It is not credit that may count only towards a qualification in the Register of Regulated Qualifications.
- b. It is credit that may count towards a course that is designated under the Education (Student Support) Regulations 2011.

A course that is not covered by the above definitions, but would sit at Level 4 or higher of the Framework for Higher Education Qualifications, would be considered as non-recognised higher education. Common examples include professionally accredited and other short courses, as well as certificates and diplomas that are regulated by the Office of Qualifications and Examinations Regulation (listed on the Register of Regulated Qualifications, and for which students may be entitled to Advanced Learner Loans).

awarding body wherever and however they study'. There were approximately 600,000 students studying outside the UK for awards offered by 114 registered English higher education providers in the 2018-19 academic year.<sup>9</sup> Transnational education is therefore a substantial and important part of activity in the sector, and students studying through that mechanism are entitled to regulatory protection for quality and standards on the same basis as those studying in the UK.

37. It is also currently the case that each registered provider needs to satisfy our regulatory requirements relating to quality and standards for all of its higher education activity. This encompasses any activity which aims for a qualification or credit higher than A-level standard. While the data indicators we use to report on student outcomes are currently limited in their ability to report comprehensively on some forms of higher education activity, the current coverage of those indicators does not limit our regulation of quality and standards. We expect our ongoing development of student outcome data indicators to extend their coverage, in particular in relation to the overseas activity of a registered provider, and to UK-based courses which are not recognised for OfS funding purposes.

### **Student outcomes**

38. We propose to continue to include in the definition of 'quality' minimum requirements for student outcomes. We are making this proposal because we consider the outcomes delivered for a provider's students to be an essential and integral part of the quality of a higher education course. Paragraphs 55 to 71 and Annex B contain more specific proposals in this area.

### **Definition of 'standards'**

39. HERA permits the OfS to impose conditions of registration that relate to the standards applied to higher education courses, including requiring particular standards to be applied. We would expect to continue to impose a condition that relates to standards and so propose to include 'standards' in our regulatory definition. Section 13 of HERA says that where there are one or more 'sector-recognised standards', the condition regarding standards may relate only to the standards applied in respect of matters for which there are sector-recognised standards. We propose to continue to use the existing sector-recognised standards that relate to 'threshold standards' specified in the regulatory framework. We also propose to add the new sector-recognised standards adopted by the UK Standing Committee for Quality Assessment (UKSCQA) in June 2019.<sup>10</sup> These are standards for Level 6 (bachelors' degree with honours) qualifications.
40. We are making this proposal because the current sector-recognised standards included in the regulatory framework relate only to the minimum requirements a student needs to meet to be awarded a particular qualification. In other words, they describe the achievement of a student who is awarded a bare pass degree. They do not set out the minimum requirements for the classes of degrees awarded to undergraduate students; for example, they do not describe the achievement of a student who is awarded a first class degree. Adding the new UKSCQA sector-recognised standards to the definition of 'standards' in the regulatory framework will

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<sup>9</sup> Source: Higher Education Statistics Agency Aggregate Offshore Record 2018-19 (available at [www.hesa.ac.uk/data-and-analysis/students/table-21](http://www.hesa.ac.uk/data-and-analysis/students/table-21)).

<sup>10</sup> See [ukscqa.org.uk/what-we-do/degree-standards/](http://ukscqa.org.uk/what-we-do/degree-standards/).

allow us to respond to concerns about grade inflation by allowing an assessment to be made about whether the classes of bachelors' degrees awarded by a provider meet, in practice, sector-recognised standards.

### **Quality and standards requirements for providers seeking registration**

41. We propose to continue to impose conditions that relate to quality and standards as initial conditions of registration for providers seeking registration with the OfS. However, we would express some of these initial requirements differently from the equivalent ongoing requirement, to ensure that our regulatory approach appropriately reflects the context for a provider that may not yet have delivered higher education but is able to present credible plans to do so.
42. We are making this proposal because the outcomes-focused formulation used in the current B conditions has presented challenges for new providers with no track record of delivering higher education. For example, it can be difficult for a provider to demonstrate that students are provided with the support they need to succeed (as required by condition B2) when it has no students. Our approach is that these providers should be assessed on the basis of the adequacy of their plans to meet these requirements when they do deliver higher education courses, and the likelihood that such plans will be implemented effectively in practice. Review teams deployed by the designated quality body have experienced challenges in formulating forward-looking 'in prospect' judgements in this way and this presents challenges for the OfS in reaching judgements about whether initial conditions are satisfied. Our current view is that it would be more helpful in this context to express the minimum baseline requirements a new provider needs to satisfy in a way that more explicitly recognises that our interest is in the credibility of its plans. Our approach to assessing student outcomes for providers without a track record of delivering higher education is set out in paragraph 43.
43. We propose to continue to impose an initial condition that relates to student outcomes for any provider with sufficient data to construct indicators and would expect this to be expressed in the same way as for the equivalent ongoing condition. We will consider that a provider does not have sufficient data to construct indicators if it has not previously been required to submit statutory data returns to the designated data body (or equivalent) that would give rise to the calculation of at least one data point for at least one of the student outcome measures examined in the assessment of the condition. In such cases, the relevant initial condition would be disapplied for the purpose of registration.

### **What would be the effect of this proposal?**

44. The effect of this proposal is that the OfS would redefine 'quality' and 'standards' on the basis of Table 1 in Annex A and would, in a subsequent consultation, set out proposals for translating the content of Table 1 into redrafted B conditions. These revised conditions would cover the student academic lifecycle: access and admissions, course content, structure and delivery, resources and academic support, successful outcomes and secure standards.
45. Our proposal about the broad scope of the OfS's regulatory interest in quality and standards for all of a provider's courses and students would ensure that all students are able to benefit from regulatory protection and provide clarity for providers, students and other stakeholders about the 'universal' nature of a provider's obligations for the quality and standards of all of its courses.

46. We would also provide guidance in the regulatory framework about how the OfS is likely to interpret the requirements contained in the redrafted conditions. The guidance currently contained in the regulatory framework refers to the expectations and core practices of the Quality Code,<sup>11</sup> which uses slightly different language from the OfS's B conditions and behaviours. We consider that this adds unnecessary complexity to our approach and risks creating a lack of clarity about our requirements. Our proposals would therefore result in the removal of references to the Quality Code from the guidance in the regulatory framework, although the regulatory requirements expressed in the regulatory framework would continue to broadly cover the issues expressed in the expectations and core practices of the Quality Code.
47. The effect of this proposal would be to provide greater clarity about the requirements we place on providers and greater certainty for them about how we will interpret those requirements expressed as qualitative principles. It would also provide clarity about the status of non-regulatory guidance published by other organisations. This approach would therefore reduce regulatory burden for providers because they would need to expend less effort on understanding and navigating our requirements.
48. The proposed approach would also provide greater clarity for students about the requirements we place on providers and the minimum protection in place.
49. Adopting new sector-recognised standards would ensure that the OfS is able to take regulatory action where the standards set for, and achieved by, a provider's students are not met. The new sector-recognised standards would allow us to directly regulate standards in relation to the classifications awarded for undergraduate degrees and ensure that students and other stakeholders could be confident in the value of higher education qualifications.
50. Our proposals would also assist new providers seeking registration to understand our requirements and provide the evidence necessary to demonstrate that these have been satisfied. This will help, in particular, providers without a track record of delivering higher education to meet the requirements for registration in a more straightforward way. This will also have a positive impact on students considering study at such a provider because it will have satisfied a clear regulatory test of its future plans.

## **What is the reasoning for this proposal?**

51. Revising how 'quality' and 'standards' are defined and the way minimum baselines are expressed, and providing clear guidance about how requirements will be interpreted, will allow providers to comply with them with greater confidence. The changes proposed will also provide assurance for students and other stakeholders about how the OfS defines and regulates 'quality' and 'standards' across the higher education sector.
52. Applying the same minimum baseline requirements to all providers means that we would not set lower regulatory requirements for providers that recruit students from underrepresented groups, or with protected characteristics. This is important because all students are entitled to the same minimum baseline of quality, including the outcomes delivered for them. To take a

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<sup>11</sup> Where we refer to the 'Quality Code' in this consultation we mean the UK Quality Code for Higher Education published in March 2018 by UKSCQA, available at <https://ukscqa.org.uk/what-we-do/uk-quality-code/>.

different approach where providers with such students were held to a lower regulatory standard would mean that we risked baking disadvantage into the regulatory system. This is the case for any numerical baselines we set for student outcomes (see Annex B), and also for the minimum baselines we set in other areas of quality and standards.

53. Our view is that it remains necessary to take a principles- and outcomes-based approach to setting some minimum baseline requirements for quality and standards, because we do not wish to push providers to adopt a particular approach to the way they design and deliver higher education courses as this would inhibit innovation. We do not consider that this would be in the interests of students or of providers themselves, not least because we understand the importance of institutional autonomy in relation to quality and standards. However, our proposals would mean that we would take a more rules-based approach to specifying some requirements. This is the case for our requirements for student outcomes, and in relation to sector-recognised standards. We are proposing this approach because these are areas in which we can provide greater clarity about the level of performance required from all providers.
54. Taking a different approach to setting initial regulatory requirements for providers that have not previously delivered higher education that are seeking registration will ensure our approach works more effectively for them. We expect the vast majority of future applications for registration to be from providers that are new to the higher education sector. This means that our approach to setting initial conditions needs to work effectively for these providers, providing clarity about our expectations and allowing us to assess evidence that a provider will be able to deliver high quality courses and deliver successful outcomes for its students, even if it does not currently deliver higher education courses. This approach would reduce the regulatory barriers for new providers seeking to access the regulated sector and therefore expand choice for students.

### **Questions relating to Proposal 1**

**Question 1a:** Do you agree or disagree with the proposed definitions of 'quality' and 'standards' set out in Table 1 of Annex A and that this should be used to express minimum baseline requirements for quality and standards in revised B conditions?

**Question 1b:** Do you have any comments about how the proposed definitions of quality and standards set out in Table 1 of Annex A should be assessed for individual providers?

**Question 1c:** Do you agree or disagree with the proposal in paragraphs 41 to 43 to express initial requirements differently from the equivalent ongoing requirement for providers seeking registration?

## **Proposal 2: Set numerical baselines for student outcomes and assess a provider's absolute performance in relation to these**

### **What are we proposing and why?**

55. We propose to set numerical baselines for student outcomes and assess a provider's absolute performance in relation to these, as set out in Annex B, as an integral part of our requirements for quality.

56. We propose to define our requirements by setting numerical baselines for acceptable performance for indicators relating to continuation, completion and progression to managerial and professional employment or higher level study. We consider that these indicators are appropriate to use for regulatory purposes because:
- a. Continuation helps us to understand whether a provider is recruiting students able to succeed through the early stages of its courses. Although there will always be a proportion of students who drop out of their course for unavoidable personal reasons, low continuation rates suggest that students may not have been appropriately recruited, that the course did not meet their expectations and aspirations, or that insufficient support was put in place to enable them to continue.
  - b. Completion is a similar measure to continuation and tells us whether a provider is recruiting students able to succeed through the end of its courses. It covers the whole student lifecycle (where the cost in financial and personal terms of failing to complete a higher education course may be even more significant than for students leaving earlier in the course) by measuring whether a student gains a qualification at the end of their study. The measure is intended to work together with measures of continuation, to provide a balance between a more immediate continuation indicator focused on the point in the student lifecycle where, across the sector, student non-completion is most significant, and a completion indicator looking over the whole student lifecycle. This difference in focus means that there will not be a direct, linear, relationship between a provider's continuation rate and its completion rate.
  - c. Progression tells us whether a provider's students have successful student outcomes beyond graduation. Although individual students will define their success beyond graduation in relation to their own goals and motivations, it is important to ensure that graduates are achieving outcomes consistent with the higher education qualification they have completed. Low rates of progression into employment and higher level study destinations commensurate with the qualification they have completed may suggest that a course has not equipped students with knowledge and skills appropriate to their intended learning aims, or that students were not effectively supported to transition into the workplace.
57. As now, indicators would show a provider's performance which would be assessed against a numerical baseline. We would in addition consider a provider's context to ensure we have properly understood its absolute performance.
58. We propose to adopt an approach to setting numerical baselines that would result in an increased, more challenging, performance requirement for all providers. We also propose to assess student outcomes at a more granular level by considering the performance of a provider at subject level, in courses delivered through partnerships and for students studying outside the UK.
59. We also propose to improve transparency in relation to the indicators used to regulate student outcomes by publishing the indicators for individual providers to show their performance in relation to the numerical baselines.

60. We are concerned with the outcomes delivered for ‘all students, from all backgrounds’ and our proposals would ensure that providers that recruit students from underrepresented groups and with protected characteristics are held to the same minimum level of performance as other providers.
61. If, following the current consultation, we decided to progress these proposals, we would envisage undertaking further, more detailed consultation on changes to the wording of current condition B3 and the regulatory framework, on the detailed definitions of the indicators and on the level at which we would set numerical baselines. The purpose of further consultation would be to more clearly articulate the level of performance required and how the condition would be assessed in practice.
62. We are making this proposal because we used an approach to assessing student outcomes during the initial registration process that used numerical baselines that were set generously and resulted in some providers satisfying condition B3 despite delivering outcomes for students that we judged to be of concern. For example, we set a numerical baseline for continuation for full-time first degree students of 75 per cent<sup>12</sup> and this means that we accepted in principle that a quarter of a provider’s students could fail to progress from the first to the second year of their course. We do not consider that to be an appropriate minimum requirement in a high quality higher education sector where students and the taxpayer are the majority funders. In proposing this approach, we are having regard to, among other things, guidance from the Secretary of State that welcomes work by the OfS to develop ‘even more rigorous and demanding quality requirements.’<sup>13</sup>
63. Our approach during the initial registration process also meant that some providers were registered because we judged their performance to be acceptable in aggregate, even if there were pockets of performance that may have fallen below a numerical baseline. This approach had a direct impact on students: on the basis of the most recent data for registered providers, there were almost 65,000 students in 2018-19 on courses that would not have met the numerical baselines we used for registration if we had assessed each of those courses against the relevant baseline. This means that around 3 per cent of the total student population in registered providers in that year were on courses that did not meet the numerical baseline we had put in place.

## **What would be the effect of this proposal?**

64. The effect of the proposal would be that all providers would be required to meet the same numerical baselines for performance in continuation, completion, and progression to managerial and professional employment or higher level study. We propose that those baselines would be more challenging than those used during the initial registration period and we would be clear about how they had been determined. We would also be clear about how

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<sup>12</sup> See ‘Condition B3: Baselines for student outcomes indicators’, available at [www.officeforstudents.org.uk/publications/registration-key-themes-and-analysis/](http://www.officeforstudents.org.uk/publications/registration-key-themes-and-analysis/).

<sup>13</sup> See ‘Supplementary strategic guidance for the OfS’ (letter from the Secretary of State for Education, 16 September 2019, available at [www.officeforstudents.org.uk/advice-and-guidance/regulation/guidance-from-government/](http://www.officeforstudents.org.uk/advice-and-guidance/regulation/guidance-from-government/)).

and when a provider's context, and other relevant factors, would be taken into account as we assess its performance.

65. We would not set lower regulatory requirements for providers that recruit students from underrepresented groups, or with protected characteristics.
66. We would be able to consider whether compliance action was appropriate where a provider's performance fell below a numerical baseline.
67. The proposed approach would provide greater protection for students from providers and provision that resulted in weak outcomes. It would also provide greater clarity for students and other stakeholders about the requirements we place on providers and the minimum protection in place for students and for the taxpayer's investment in higher education.

## What is the reasoning for this proposal?

68. Setting numerical baselines for student outcomes is necessary to provide clarity about the minimum requirements placed on all providers. Outcomes themselves are expressed in numerical form and we therefore consider it appropriate to set baselines in a corresponding way.
69. Using numerical baselines based on a provider's actual performance would mean that all students (by which we mean students from all backgrounds or different demographic groups) would be entitled to the same minimum level of quality, including outcomes. We see this as a consumer protection mechanism as set out in paragraph 16.
70. We are proposing to set more challenging numerical baselines because we consider this necessary to ensure that taxpayer investment in higher education, through OfS public grant funding and government-backed student loans, is focused on courses that deliver high quality, including successful outcomes. This is also necessary to maintain public confidence that the higher education sector in England is a consistently high quality sector and to protect the interests of students.
71. More detailed reasoning for this proposal is contained in Annex B.

### Questions relating to Proposal 2

**Question 2a:** Do you agree or disagree with the proposed approach to assessing student outcomes set out in Annex B?

**Question 2b:** Are there any other quantitative measures of student outcomes that we should consider in addition to continuation, completion and progression (see Annex B paragraph 18)?

**Question 2c:** Do you agree or disagree with the proposals for the levels of study at which indicators should be constructed? Should any additional indicators be considered (see Annex B paragraph 25)?

**Question 2d:** Do you have any comments about an appropriate balance between the volume and complexity of indicators and a method that allows us to identify ‘pockets’ of performance that are below a numerical baseline (see Annex B paragraph 32)?

**Question 2e:** Do you agree or disagree with the demographic characteristics we propose to use (see Annex B paragraph 36)? Are there further demographic characteristics which we should consider including in the list of ‘split indicators’?

**Question 2f:** Do you agree or disagree that the longitudinal educational outcomes dataset should be used to provide further indicators in relation to graduate outcomes (see Annex B paragraph 46)?

**Question 2g:** Do you have any comments about how the range of sector-level performance should be taken into account in setting numerical baselines (see Annex B paragraph 57)?

**Question 2h:** Do you have any comments about the other contextual factors that should be taken into account and the weight that should be placed on them (see Annex B paragraph 68)?

## **Proposal 3: Clarify the indicators and approach used for risk-based monitoring of quality and standards**

### **What are we proposing and why?**

72. We propose to use a defined set of indicators and contextual information about each registered provider, to monitor compliance with quality and standards conditions as set out in Annex C. This approach would provide us with signals to show where further engagement, evidence-gathering, or investigation might be necessary before we decide whether regulatory risk has increased for an individual provider.
73. Our proposal is to implement the general monitoring approach set out in the regulatory framework for the B conditions by bringing together a range of information for each provider – lead and lagged indicators of performance and context, reportable events and patterns of notifications – in a systematic way. Our view is that this approach will ensure that we are able to see and understand the performance of a provider, and the reasons for this performance, in the round. This means that we will be better able to calibrate our approach to intervention than is the case if we are focused on monitoring individual conditions in isolation.
74. However, indicators used for monitoring purposes are likely to show changes that might not, in themselves, reveal areas of weakness or concern for an individual provider, but simply flag possible increased risk. A change in an indicator does not therefore automatically prompt action. Instead, we will identify whether specific pieces of information or a pattern of information about a provider suggests there is sufficient risk of a breach to warrant engagement with the provider, further evidence-gathering, or more formal investigation.
75. The use of indicators in this approach to risk-based general monitoring does not prevent the OfS from separately requiring a provider’s performance to be above a numerical baseline in relation to certain student outcome indicators. This means that some indicators, for example, continuation or employment outcomes, are used in two different ways by the OfS. First, they

are indicators for which we set a minimum acceptable level of performance as part of the requirements for a particular condition of registration, as set out in Annex B. Second, they form part of a broad picture of a provider's performance and the context in which this is delivered, as set out in Annex C.

76. We are making this proposal because we have not previously set out the way in which we will translate the general approach to monitoring set out in the regulatory framework into an operational model that works effectively in the context of our quality and standards requirements. During the start-up phase of the regulatory system, we have focused on indicators of student outcomes which, by their nature, are lagging indicators – they tell us about performance in the past. We take the context for a provider into account when we interpret such indicators. But in our regulation of quality and standards more widely, we have not yet deployed systematically other, more forward-looking, indicators.
77. We are also drawing on our experience of regulating quality and standards during the coronavirus pandemic. In that context we have needed more real-time access to information about contextual risk factors for an individual provider, for example information about local public health restrictions, or about courses that may be less easily delivered online. We have also followed up more quickly and comprehensively in response to notifications from students and others, adjusting our approach to intervention to reflect a provider's context. Our view is that the proposals in Annex C would embed these aspects of our current approach in a systematic way into our more permanent monitoring arrangements.
78. We propose to use the outcomes of the TEF (subject to separate consultation on the TEF) as an indicator to identify cases where further investigation of compliance with the baseline B conditions may be necessary. This will ensure that those providers participating in the TEF, but achieving the lowest TEF rating, would know that additional scrutiny of their continued compliance with the B conditions was likely to take place.

## **What would be the effect of this proposal?**

79. The effect of the proposals in the current consultation is to provide greater operational clarity to providers about how our approach to monitoring would work in practice for quality and standards in a way that is coherent, proportionate and minimises regulatory burden for providers that do not represent significant regulatory risk. At the same time, the proposed approach would ensure that we can detect cases and act where this risk is increased.
80. Our view is that using the range of indicators set out in Annex C would allow us to see early changes in a provider's operating environment that could later have an impact on quality or standards. In particular, it would mean that we consider 'quality' in a broad-based way rather than focusing on each individual condition in isolation.
81. The effect of this proposal is that providers and others would have greater clarity about the indicators that the OfS is using as part of its monitoring approach, and how the performance shown in these indicators is interpreted through understanding of a provider's operating model and the wider operating context for the sector.
82. We understand that providers may take the view that a monitoring approach underpinned by data and reporting obligations creates regulatory burden for them. However, our view is that collecting data reduces bureaucracy and burden because it enables us to act proportionately.

We will always seek to collect and use data in a way that allows us to use the data for a range of our functions, thereby reducing the overall regulatory burden on providers. Further, the data we collect is generally data that providers need themselves for their own internal purposes. Without data, we could not vary the intensity of our monitoring activities on the basis of risk. We would need an approach that routinely reassessed compliance with quality and standards requirements for all providers, for example through a scheduled cycle of subject or institutional reviews. That would create more burden than our data-led approach. Nevertheless, we want to re-test the extent to which our approach to quality and standards is proportionate for those providers that represent minimal regulatory risk, either because of their past performance or the current context in which they are operating. For example, we have considered whether it is possible to:

- a. Vary the scale and frequency of the collection of data needed to monitor quality and standards on the basis of our assessment of regulatory risk for a provider.
- b. Vary the range of reportable events an individual provider is required to report on the basis of our assessment of regulatory risk for that provider.
- c. Disapply one or more of the B conditions for a registered provider that has demonstrated performance that is significantly above the baseline expressed in that condition, such that the OfS considers that disapplication would be proportionate to its assessment of the regulatory risk posed by the institution in accordance with section 7 of HERA.

83. We would welcome views on these points. We are, in any case, considering the regulatory burden created by our data requirements as part of a separate review of our data strategy that will lead to further consultation.

## **What is the reasoning for this proposal?**

84. We wish to ensure that the general approach set out in the regulatory framework for monitoring and intervention is realised in an effective and proportionate way for the B conditions. Setting out the indicators and other information we will use for monitoring purposes will ensure that providers understand our regulatory approach. This will also provide assurance to students and other stakeholders, as they will be able to understand in greater detail the way we target regulatory scrutiny in our risk-based approach to quality and standards.

85. The proposed approach is necessary to ensure that our activities are targeted and risk-based, such that regulatory burden falls on those providers that represent the most regulatory risk.

### **Questions relating to proposal 3**

**Question 3:** Do you agree or disagree with the proposals in Annex C for monitoring ongoing compliance with regulatory requirements for quality and standards?

## **Proposal 4: Clarify our approach to intervention and our approach to gathering further information about concerns about quality and standards**

### **What is the proposal?**

86. As set out in the regulatory framework, we aim to regulate in a way that would focus regulatory attention, and therefore burden, on cases where we consider a breach of one or more of the B conditions to be most likely or where there is significantly increased risk of a future breach. Intervention in this way is designed to send a clear signal about the importance of compliance and to incentivise providers to improve their performance where this is necessary.
87. We propose to gather further evidence where we consider this necessary in cases that raise concerns that there may be a breach of one or more of the B conditions, including by commissioning further assessment by the designated quality body, or another appropriate body, where we consider that helpful.
88. We propose to use our enforcement powers as set out in the regulatory framework, and would expect to use the most significant of those powers for a serious or persistent breach of one or more of the B conditions. As now, we may in future set eligibility requirements for the TEF that relate to compliance with the B conditions and that will be subject to consultation as part of our wider proposals for the TEF.
89. Paragraphs 90 to 106 and Annex D provide more information about aspects of this proposal.

### **Intervention**

90. The regulatory framework says that the OfS may take targeted action if it needs to establish the facts before reaching a judgement about whether there is, or is likely to be, a breach of one or more conditions of registration. Such action could be initiated each time we receive a third-party notification or each time a provider's student outcomes indicators show a downward shift. But that type of blanket approach would be unlikely to be proportionate, and would risk focusing on providers and issues that do not turn out to represent significant regulatory risk.
91. Adopting a low-risk approach might mean that we investigate cases where there is evidence that suggests even a small increased risk of a breach of one of the B conditions. A high-risk approach might mean that we investigate cases only where the evidence suggests a very high likelihood that one of these conditions has been breached. In practice, we need to set our approach to risk between these two extremes. In doing so, it is important to remember that the B conditions are expressed as minimum baselines and our expectation is that the highest quality providers would normally meet these comfortably. This means that even a decrease in performance for a high quality provider may not raise concern such that the condition is breached. Conversely, a similar decrease in performance for a provider that is already operating close to a minimum baseline may raise significant concern that the condition is breached. This concept of minimum baselines is relevant in relation to any numerical baselines we set for student outcomes for condition B3, but also to the baselines expressed in the other B conditions.

## Evidence-gathering and investigation

92. We expect there to be cases where the evidence the OfS already holds is sufficient to reach a provisional decision that there is a breach of a condition, or an increased risk that requires action. For example, new student data submitted by a provider might lead the OfS to determine that performance is below any numerical baselines in place and, after considering relevant factors, this may suggest that the condition has been breached. In such a case, the OfS would be unlikely to seek further evidence, and the provider would be invited to submit any further information it considers relevant as part of a formal representations process. This is the approach we expect to adopt for condition B3.
93. For other conditions and where the evidence from our monitoring activities is initially less clear, we would be likely to adopt one of the following approaches:
- a. Engage with a provider to ensure it is aware of issues arising from a reportable event or third-party notification.
  - b. Gather further evidence, from a provider or from elsewhere, to clarify whether a breach of one or more conditions is likely.
  - c. Use our investigatory powers in cases where engagement increases our concerns, or where the evidence suggests that a breach of one or more conditions is likely.
94. Where engagement or evidence-gathering is not possible or appropriate, or has not resolved the issue, we are able to use our formal powers to gather information, including as part of an investigation. We may do this ourselves or we may ask the designated quality body, or another appropriate body, to gather further evidence in relation to the B conditions that relate to quality and are expressed wholly as qualitative baselines, (currently conditions B1, B2 and some aspects of B4). We are required to seek the views of the designated quality body before we make a judgement about compliance with a condition that relates to standards (currently condition B5 and some aspects of B4). We would not ask the designated quality body to gather evidence in relation to a provider's compliance with a condition relating to student outcomes (currently condition B3).
95. Where we decide to commission the designated quality body, or another appropriate body, to collect further evidence, we will set out the issues that are of concern and the type of evidence we require. We would normally expect a visit to the provider and interviews with relevant staff and students to take place. Our proposed approach means that the evidence-gathering process will focus on the particular issues that are of concern, rather than involving a broad-based review of quality or standards matters. This means that regulatory activity is targeted on the basis of risk and the burden of responding to regulatory action for a provider is minimised. The likelihood of an investigatory visit to a provider in circumstances where we consider there to be concerns about regulatory risk means that sufficient evidence can be gathered to allow us to impose one or more specific ongoing conditions of registration to require improvement where this is necessary. We expect this approach to incentivise providers to improve their performance and to focus attention on ensuring ongoing compliance.
96. Having gathered further evidence as necessary, the OfS will reach a provisional decision about whether it considers there to have been a breach of one or more conditions. It may also reach a provisional decision to impose one or more specific ongoing conditions of registration

to remedy a breach or to mitigate a significantly increased risk of a future breach. We will always write to a provider to set out the reasons for such a provisional decision and set out the evidence we have used to reach this view. A provider is able to submit any further information it considers relevant in a representations process and the OfS will consider this before reaching a final decision. Where a final decision is that there has been a breach, or that one or more specific ongoing conditions should be imposed, the OfS will normally consider it appropriate to publish information about that decision and the reasons for it – again, the OfS will seek representations from a provider about a provisional decision to publish such information before any such information is published.

97. In circumstances where we have concluded that there is an increased risk of a breach that does not, at that time, require further intervention, we will write to the provider about this. Adopting the approach to intervention in the way described in paragraphs 92 and 93 would mean that we are less likely to intervene in cases where there has not been a breach, although we would draw a provider's attention to the issues that have caused concern and note that, if not addressed, these may result in a future breach of one or more conditions.
98. Where we have decided that there has been a breach of one of the B conditions, or where there is a significantly increased risk of such a breach, we may impose one or more specific ongoing conditions of registration, for example to require improvement or to mitigate the impact of poor performance on students. In such circumstances we will also consider whether a provider should be required to make more frequent data returns to allow us to monitor improvement in student outcomes more frequently, or to report additional matters as reportable events.

## **Enforcement action**

99. HERA gives the OfS enforcement powers to use if it appears to the OfS that there is or has been a breach of one or more conditions of registration. In the context of regulating quality and standards, it has the power to:
- impose one or more specific ongoing conditions of registration
  - impose a monetary penalty
  - suspend aspects of a provider's registration, to include suspending access to student support funding or OfS public grant funding
  - vary or revoke a provider's authorisation for degree awarding powers, or revoke a provider's authorisation to use 'university' in its title
  - deregister a provider.
100. The regulatory framework sets out our approach to the use of these enforcement powers, and the current consultation proposals do not propose any changes to that general approach. A breach of one or more of the B conditions would be a serious matter because it would be likely to have a significant impact on a provider's students. We would therefore expect to use the full range of enforcement powers for such a breach, including, in the most serious cases, deregistration. We would also expect to adopt an approach that would allow us to identify and take action in relation to breaches that occur for particular aspects of a

provider's provision, including at subject level, or for students with particular demographic characteristics.

101. The use of our enforcement powers in this way would ensure that a provider may be able to remedy a breach quickly so that students are not exposed to quality below the OfS's regulatory baseline. It is also the case that using our enforcement powers in these circumstances, and publishing information about such cases, will incentivise compliance from other providers and provide public confidence that the OfS is willing to actively regulate low quality provision.

## **What is the effect of this proposal?**

102. The effect of setting our approach to intervention in the way proposed would be to ensure that we are focused on the issues that are most likely to represent a breach of one or more conditions. In other words, for quality and standards, we would be less likely to intervene in cases just because we judged there to be an increased risk of a breach, but would be more likely to intervene where the evidence suggests that a breach is likely to have occurred, or where there is significant risk a breach will occur in future.
103. The proposed approach would also mean that we would not expect to impose enhanced monitoring requirements designed to prevent possible future breaches. This is different from the approach we took during the initial registration process where we imposed widespread enhanced monitoring requirements for quality and standards on a significant number of those successfully registered. All of these providers had satisfied the B conditions that had been imposed as initial conditions, otherwise they would not have been registered. This scale of regulatory intervention, therefore, related to cases where we considered there to be an increased risk of a future breach of one or more of the B conditions, rather than circumstances in which there was an actual breach.<sup>14</sup> In other words, we were acting in a pre-emptory way to prevent a future breach. This approach made sense in the context of a mass registration process in which we were often relying on historical evidence from previous quality assessment approaches, but our view is that in a more established regulatory environment we would want to consider further our risk appetite and proportionality.
104. The effect of our proposal relating to gathering further information where we have concerns about compliance with the B conditions would mean that we would be likely to extend our engagement with providers and would also be able to use that process to build providers' understanding of our regulatory approach and requirements. It would also mean that the OfS's resources are focused on the cases that represent the most risk to students.
105. Taken as a whole, our proposals would see an increasingly risk-based approach to the regulation of quality and standards, with attention focused on those issues and providers that represent greatest risk to students, with these providers incentivised to improve their

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<sup>14</sup> The fact that a provider was judged to have satisfied these conditions when it was first registered does not prevent us from reaching a different view about compliance in the future. This may be because, as a result of this or a future consultation, we change or increase the minimum baseline requirements that a provider is required to meet. It may also be because new evidence becomes available, or we develop a different view of existing evidence.

performance. Conversely, the highest quality providers would experience minimal regulatory burden in relation to our regulation of the B conditions as a result of these proposals.

## What is the reasoning for this proposal?

106. Our view is that adopting this approach to intervention would provide an appropriate balance between minimising regulatory burden for providers that present least regulatory risk, and ensuring that we are able to intervene in a targeted way in areas of most risk.

### Questions relating to proposal 4

**Question 4:** Do you agree or disagree with the proposals in paragraphs 86 to 101 for our approach to intervention and gathering further information about concerns about quality and standards?

## Proposed implementation

107. The OfS is mindful of the context within which higher education providers are currently operating, because of the coronavirus pandemic. We have made clear our commitment to reducing regulatory burden and supporting providers in the interests of students during this period.<sup>15</sup> This has included limiting the number of consultations and requests for information to which providers are subject.
108. We wrote to providers in July 2020 setting out our intention to move back to more normal regulatory activity, including by consulting on our approach to the regulation of quality and standards. Given the significance of the risks to students, particularly those from underrepresented groups and with protected characteristics, of low quality courses and weak outcomes, it is important not to delay further seeking views on our proposals. This consultation is taking place at an early stage of policy development.
109. Subject to the representations received as a result of this consultation, we intend to make a decision on whether and how to revise our approach to the regulation of quality and standards. If we are minded to make such revisions, we would expect to consult further in early 2021 on more detailed plans, including on any proposed changes to the regulatory framework.
110. In developing this consultation, we have considered alternative options for securing our objectives. These options, and the reasons why we do not propose to take them forward, are set out in Annex F.
111. The consultation questions are listed in full in Annex E.

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<sup>15</sup> See our letter of 25 March 2020, available at [www.officeforstudents.org.uk/publications/regulatory-requirements-during-the-coronavirus-covid-19-pandemic/](http://www.officeforstudents.org.uk/publications/regulatory-requirements-during-the-coronavirus-covid-19-pandemic/).

## **Annex A: Proposed definitions of ‘quality’ and ‘standards’**

1. Table 1 contains our proposed definitions of ‘quality’ and ‘standards’. We propose to use these definitions to express minimum baseline requirements for quality and standards in revised B conditions. Those revised B conditions, and the associated guidance in the regulatory framework, would be subject to further consultation.

**Table 1: Proposed definitions of ‘quality’ and ‘standards’ that would represent minimum baseline requirements**

Access and admissions	Course content, structure and delivery	Resources and academic support	Successful outcomes	Secure standards
<ul style="list-style-type: none"> <li>• Students admitted to a course have the capability and potential to successfully complete their course.</li> <li>• The provider’s admissions arrangements identify the additional support students need to successfully complete their course.</li> </ul>	<ul style="list-style-type: none"> <li>• The content of a course is up-to-date and assessed effectively.</li> <li>• The content and assessment of a course provides educational challenge consistent with the level of the course.</li> <li>• The structure of a course is coherent and delivers academic progression through the course.</li> <li>• The content and structure of a course allows students to develop intellectual and professional skills.</li> <li>• The course is delivered effectively and in a way that meets the needs of individual students.</li> </ul>	<ul style="list-style-type: none"> <li>• Staff who design and deliver a course are sufficient in number, appropriately qualified and deployed effectively to deliver in practice.</li> <li>• Physical and virtual learning resources are adequate and deployed effectively to meet the needs of individual students.</li> <li>• Academic support, including specialist support, is adequate and deployed effectively to meet the needs of individual students.</li> <li>• Students are effectively engaged in the quality of their educational experience.</li> </ul>	<ul style="list-style-type: none"> <li>• Students continue from their first to second year at a rate above the OfS numerical baseline.</li> <li>• Students complete their course at a rate above the OfS numerical baseline.</li> <li>• Students progress to managerial and professional employment (or employment appropriate to the qualification level) or to higher level study at a rate above the OfS numerical baseline.</li> <li>• Students have the right skills from their course once in employment and employers are satisfied with the graduates they employ.</li> </ul>	<ul style="list-style-type: none"> <li>• The standards set by the provider (if it is an awarding body) and achieved by its students are consistent with sector-recognised standards.</li> <li>• The provider’s assurance arrangements ensure that assessment of students and the resulting awards are valid and reliable.</li> <li>• Qualifications awarded to students have value at the point of qualification and over time.</li> </ul>

2. Table 1 can be understood as follows:
  - a. The content of the unshaded bullets, added together, constitutes the definition of 'quality'. We propose to express most of these requirements in a principles-based way.
  - b. The first three bullets in the column titled 'successful outcomes' contain the elements of the definition of 'quality' that relate to student outcomes. We propose to express these requirements in a more rules-based way – see Annex B for more information about this.
  - c. The content of the shaded bullet constitutes the definition of 'standards' for the purposes of section 13 of HERA. We propose to express this requirement in a more rules-based way. The sector-recognised standards that we propose to adopt are:
    - i. The threshold standards currently contained in the regulatory framework.<sup>16</sup>
    - ii. The degree classification descriptions for bachelors' degrees adopted by the UKSCQA.<sup>17</sup>
3. These proposed definitions of 'quality' and 'standards' cover the student academic lifecycle: access and admissions, course content, structure and delivery, resources and academic support, successful outcomes and secure standards. Collectively they are intended to articulate baseline quality and standards in a way that is comprehensive and focuses on the actual experience of the student, on student outcomes and standards, rather than focusing on the existence of appropriate underpinning strategies, policies and procedures. The proposed definitions have been framed so that they can be applied across the full range of higher education activities. The reasons we consider each element of the definitions to be important are:
  - a. **Access and admissions:** The bullets in this group relate to factors that secure quality at the admissions stage. These are an important part of a regulatory definition of baseline 'quality' because the students recruited themselves need to be able to benefit from the course they follow and support provided to them.
  - b. **Course content, structure and delivery:** The bullets in this group relate to aspects of the course itself. These are an important part of a regulatory definition of baseline 'quality' because for a course to be of benefit to students and to represent value for money for students and taxpayers it needs to be well-designed, have appropriate currency and be delivered effectively.
  - c. **Resources and academic support:** The bullets in this group relate to the resources that are necessary for the successful delivery of courses. These are an important part of a regulatory definition of baseline 'quality' because the availability and effective use of staff and other resources, and student access to appropriate academic and specialist support, all make an essential contribution to achieving baseline quality.

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<sup>16</sup> See 'Sector-recognised standards in England', available at [www.officeforstudents.org.uk/publications/securing-student-success-regulatory-framework-for-higher-education-in-england/](http://www.officeforstudents.org.uk/publications/securing-student-success-regulatory-framework-for-higher-education-in-england/).

<sup>17</sup> See [ukscqa.org.uk/2019/10/10/higher-education-sector-announces-new-initiatives-to-protect-value-of-uk-degrees/](http://ukscqa.org.uk/2019/10/10/higher-education-sector-announces-new-initiatives-to-protect-value-of-uk-degrees/)

- d. **Successful outcomes:** The bullets in this group relate to the outcomes achieved for students as a result of deciding to register on a higher education course. These are an important part of the regulatory definitions of baseline 'quality' in our approach because the outcomes achieved by students, no less than the requirements set out in other parts of the definition, are a measure of the quality of their experience of higher education. Our view is that baseline requirements relating to student outcomes should therefore be included as part of our definition of quality.
  
- e. **Secure standards:** The bullets in this group relate to the setting and maintenance of the standard of awards. The first element constitutes the definition of 'standards' in line with the definition in section 13 of HERA. This is important because qualifications awarded by higher education providers must meet these standards so that students and others can have confidence in the credibility of the credential at the end of a course. The other elements in this group are part of the definition of 'quality': they are not a measure of whether the standards applied to higher education meet sector-recognised standards in practice. They are, however, an important part of a regulatory definition of baseline 'quality' because providers must take effective action over time in a number of areas for assessment to be reliable and for qualifications to hold their value over time.

# Annex B: Proposed approach to setting and assessing numerical baselines for student outcomes

1. Condition B3 currently puts in place the following requirement for providers seeking registration and those already registered.

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

2. The main features of the OfS's current policy for condition B3 as set out in the regulatory framework and published regulatory advice are:
  - a. A range of student indicators are constructed from data previously submitted by a provider.
  - b. The indicators include student continuation rates, completion rates and graduate employment rates and, in particular, progression to professional and managerial jobs and postgraduate study.
  - c. The indicators are reported separately for each mode and level of study and broken down to show outcomes for students with different characteristics.
  - d. The indicators show the actual performance of a provider over time, rather than its performance when compared with a sector-adjusted benchmark.
  - e. A minimum level of performance in the indicators set out in the regulatory framework is used to determine whether a provider may be registered (taking into account the context of that provider). Because the indicators express the outcomes providers achieve in a numerical form, we have also expressed the minimum level of performance as a numerical baseline.
  - f. If the outcomes achieved by a provider's students meet a minimum acceptable baseline set by the OfS, this is likely to indicate compliance with the condition.
  - g. The impact of the provider's performance on students with different equality characteristics will be taken into account in making an assessment of whether the condition is satisfied.
  - h. Assessment of condition B3 will be undertaken by the OfS itself.
3. We propose that our future approach to the regulation of student outcomes should continue to fit within the following principles set out in the regulatory framework:
  - a. Consideration of a range of student outcomes indicators, which would continue to be broken down to show outcomes for students with different characteristics.
  - b. Consideration of the actual performance of the provider over time, taking into account contextual factors.

- c. Consideration of the impact of a provider's performance on students with different characteristics in assessing whether or not the provider meets the minimum level of performance.
  - d. Assessment of condition B3 undertaken by the OfS itself.
4. During the initial registration process we established generous numerical baselines that had been adjusted downwards to make allowance for differences in performance between demographic groups. We took the view that this was appropriate and proportionate during the first year of our operation and when we were moving providers into a new regulatory system.
  5. We now propose to develop our policy approach to the regulation of student outcomes, so that it will:
    - a. Continue to focus on a provider's absolute performance, rather than its performance relative to that of other providers.
    - b. Set higher, more challenging, numerical baselines that apply to each indicator and all providers. We propose that numerical baselines will not be adjusted to take account of differences in performance between demographic groups.
    - c. Allow us to identify and intervene where student outcomes are below a numerical baseline at a more granular level, including consideration of performance at subject level, in courses delivered through partnerships, and for students studying outside the UK.
    - d. Improve transparency in relation to the indicators used to regulate student outcomes.
  6. Raising the bar for student outcomes at this time, and setting out how the bar might be raised further in the future, is consistent with maintaining public confidence that the higher education sector in England is a consistently high quality sector.
  7. Adopting an approach that allows us to assess and regulate student outcomes in a more granular way means that we are able to identify and take regulatory action in relation to pockets of performance within a provider that are below a numerical baseline, and target our regulatory action in a proportionate way.
  8. It is proposed that the assessment of condition B3 will heavily rely on a provider's absolute performance shown in the proposed indicators. However, we also propose to continue to consider the context in which a provider operates, along with any other relevant factors, as a way of ensuring we have properly interpreted its absolute performance.
  9. Ensuring there is transparency about the indicators we use to make decisions is also a matter of public confidence, but has further benefits for students and providers. A range of indicators showing the outcomes delivered by registered providers is available on our website and those of the Department for Education and the designated data body, the Higher Education Statistics Agency (HESA).<sup>18</sup> We consider it important that students, providers and other stakeholders

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<sup>18</sup> See, for example, [www.officeforstudents.org.uk/data-and-analysis/institutional-performance-measures/](http://www.officeforstudents.org.uk/data-and-analysis/institutional-performance-measures/), as well as information about higher education students and further education colleges at [www.gov.uk/government/collections/official-statistics-releases](http://www.gov.uk/government/collections/official-statistics-releases) and [www.gov.uk/government/collections/qualification-achievement-rates-and-minimum-standards](http://www.gov.uk/government/collections/qualification-achievement-rates-and-minimum-standards), and

should have access to the indicators that directly inform our regulatory decisions relating to student outcomes. To that end, we propose to publish the indicators for individual providers to show their performance in relation to the numerical baselines. We will also publish sector-level indicators. This will enable stakeholders to better access and understand the data on which our decisions are based and the performance we expect providers to achieve.

10. Subject to the responses to this consultation and any final decisions about the proposals included here, we would expect to consult further on more detailed proposals. These would specify the indicator definitions we propose to apply, the numerical baselines we propose to set, and the statistical and assessment methods that would support our regulatory decisions relating to student outcomes.

## The indicators we propose to use

11. We propose to continue to assess student outcomes by constructing the following indicators:
  - a. Student continuation.
  - b. Student completion.
  - c. Progression to managerial and professional jobs or higher-level study.
12. We consider that these indicators are the most relevant measures of student outcomes available and, for students studying for recognised higher education qualifications in the UK who are taught or registered by an English higher education provider, can be reliably constructed from data that is already available.
13. Continuation rates provide a strong indication of whether a student has been appropriately recruited onto a suitable course that matches their abilities and aspirations, and whether they then receive the support they need to continue the course. Continuation rates identify at an early stage whether a student's investment of money and time have, for whatever reason, not led to a successful outcome. There is evidence that starting a higher education course but not completing it can have a more detrimental impact on an individual's earnings than if they had never started it.<sup>19</sup> The continuation rates indicator focuses on an early point in the student lifecycle, currently identifying where students leave their studies within the first year for full-time students, or within the first two years for part-time students.
14. Completion rates provide further insight into similar matters as continuation rates, and identify where students are leaving from the later stages of multi-year courses. This is particularly important for courses of longer duration, such as many part-time courses.
15. Rates of progression to managerial and professional employment or a higher level of study provide a measure of success beyond graduation.

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information published by the designated data body at [www.hesa.ac.uk/data-and-analysis/students/outcomes](http://www.hesa.ac.uk/data-and-analysis/students/outcomes) and [www.hesa.ac.uk/data-and-analysis/performance-indicators](http://www.hesa.ac.uk/data-and-analysis/performance-indicators).

<sup>19</sup> See 'The impact of undergraduate degrees on early career earnings', available at <https://www.gov.uk/government/publications/undergraduate-degrees-labour-market-returns>.

16. During the initial registration process we considered indicators that showed the percentage point gap between the number of leavers from Level 6+ undergraduate degrees who were awarded 'first' or 'upper second (2:1) degree classifications as a percentage of all those leavers from Level 6+ undergraduate degrees who were awarded classified degrees. We are proposing that this should no longer be a measure in relation to the baseline regulation of student outcomes for providers that have an approved access and participation plan (APP). This is because the indicator relates to the gaps in degree classifications awarded to students with different characteristics, rather than considering an absolute measure of the outcomes a provider delivers for its students. APPs are focused on addressing gaps between groups – including on this same indicator definition – and we therefore consider that this indicator should more appropriately be considered as part of the APP approval process. We propose to continue to consider this indicator for any provider without an approved APP.
17. Data in relation to the proportion of 1st and 2:1 degree classifications awarded is relevant to our current assessment of condition B4 and ensuring that qualifications hold their value over time. We do not think it would be appropriate to set a minimum numerical baseline in relation to the number of degrees awarded with a particular classification within the assessment of condition B3 – this is a matter for autonomous degree awarding bodies to determine, subject to the requirements currently expressed in condition B4.
18. We would welcome views on whether there are any other quantitative measures of student outcomes that we should consider, for example, an indicator that projects rates of students progressing from entry to professional employment or further study (previously referred to as 'start to success'), or measures that might provide supplementary or additional contextual information about a provider's performance that might not be captured in the core indicators described in paragraph 11.
19. We propose that the indicators will be constructed to show the provider's performance in aggregate, over a time series of up to five years for which data exists for the provider. They would also show the performance for each year in the time series separately.
20. We propose that indicators will be constructed for any size of student population. but recognise that data can become unreliable where the population size is too small. This is one reason for also considering aggregated data, as over time it allows an assessment of provision and providers that have very small student populations. We also propose that regardless of the population size being large or small, our presentation of the indicators will describe the statistical uncertainty associated with each indicator value. The size of student population that should be included in an assessment, and the methods used to communicate statistical uncertainty, will be tested through further consultation.
21. While we expect to use the same general approach to the assessment of student outcomes in relation to modular provision, we are aware that there will be challenges in extending the coverage and definitions of our existing indicators. We expect our ongoing development of student outcome indicators to establish the feasibility of making these extensions, and we will consult in due course on the concepts, specifications and data reporting requirements for measures which might be used for modular provision. In doing so we will as far as possible use the existing and evolving higher education data landscape to best effect, rather than by requiring additional data collection.

22. An example of a workbook for condition B3 which shows the current indicators and split indicators (described at paragraph 2 of this Annex) at a sector level is available at [www.officeforstudents.org.uk/publications/registration-condition-b3-2020-sector-level-indicators/](http://www.officeforstudents.org.uk/publications/registration-condition-b3-2020-sector-level-indicators/).

### **Indicators for mode and level of study**

23. We propose to construct the indicators at paragraph 11 to show performance separately for both full-time and part-time modes, and separately within each mode for level of study as follows:

- a. Other undergraduate.
- b. First degree.
- c. Undergraduate with postgraduate elements<sup>20</sup>.
- d. PGCE.
- e. Postgraduate taught Masters.
- f. Other postgraduate<sup>21</sup>.
- g. Postgraduate research.

24. We are able to construct these indicators for students studying for recognised higher education qualifications in the UK who are taught or registered by an English higher education provider now. As proposed in paragraphs 29, 33 and 34 below we plan to extend the coverage of these indicators.

25. We are interested in views about whether any additional indicators should be considered, for example, the separation of: first degree provision which includes an integrated foundation year from other first degrees; top-up courses; sandwich year provision; apprenticeships; and accelerated degrees or distance learning. The construction of any additional indicators would be dependent on data quality and reliability, but we are interested in views on whether there is certain provision that has distinctive characteristics to the extent that the performance of students might vary significantly from other provision with the same qualification aim.

### **Indicators for subjects**

26. In addition to showing performance in each indicator separately for each mode and level of study, we also propose to also show performance for subjects within each level and mode of

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<sup>20</sup> Examples of undergraduate courses with postgraduate elements include: integrated undergraduate-postgraduate taught masters' degrees on the enhanced or extended pattern; pre-registration medical degrees regulated by the General Medical Council; pre-registration dentistry degrees regulated by the General Dental Council; and other graduate or postgraduate diplomas, certificates or degrees at Levels 5 and 6 where a Level 5 or 6 qualification is a prerequisite for course entry.

Examples of other postgraduate courses include: postgraduate certificates and diplomas; diplomas in teaching in the lifelong learning sector at Level 7; post-registration health and social care qualifications at Level 7; and taught qualifications at Level 7 leading towards obtaining eligibility to register to practice with a health or social care or veterinary statutory regulatory body.

study. This means that for each level of study listed at paragraph 23 – for example ‘other undergraduate’ – we would create indicators in aggregate and over the time series for a distinct subject group within that level, for example business and management, computing, mechanical engineering, health and social care etc.

27. The grouping of subjects is complex, and detailed proposals will be set out in further consultation, but we expect our starting point to be consideration of subject groups as defined by level 2 of the Common Aggregation Hierarchy,<sup>22</sup> and we would aim to align as far as possible with subject definitions used within TEF.
28. A simplified example of what this might mean in practice is set out in Table 1 and shows only the indicator values (information on the population size for each value, and on response rates and statistical uncertainty, would also be incorporated into the presentation of B3 indicators data). This example is based on full-time continuation rates:

**Table 2: Example of how indicators could be broken down for a provider**

	<b>Aggregated indicator (all five years combined)</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
<b>Other undergraduate (all subjects)</b>	<b>82.3%</b>	<b>79.5%</b>	<b>72.5%</b>	<b>84.5%</b>	<b>86.5%</b>	<b>87.5%</b>
Business and management	87.0%	85.0%	85.0%	90.0%	90.0%	90.0%
Computing	70.9%	66.7%	52.2%	74.4%	78.9%	78.9%
Mechanical engineering	92.7%	91.1%	90.0%	93.3%	93.3%	95.6%
<b>First degree (all subjects)</b>	<b>91.8%</b>	<b>91.6%</b>	<b>90.7%</b>	<b>92.3%</b>	<b>91.7%</b>	<b>92.9%</b>
Business and management	89.9%	90.0%	95.5%	89.8%	87.8%	89.3%
Computing	93.8%	93.5%	92.0%	92.8%	94.8%	96.0%
Mechanical engineering	91.8%	91.0%	78.5%	96.5%	93.5%	94.0%

### Indicators for partnership arrangements

29. We consider that each registered provider holds responsibility for the quality and standards of provision for all of its higher education courses, irrespective of the organisation that delivers them. This includes:
- a. The students it teaches.

<sup>22</sup> See [www.hesa.ac.uk/innovation/hecos](http://www.hesa.ac.uk/innovation/hecos).

- b. The students it registers.
  - c. The students for whom it is the awarding body.
30. We therefore propose to construct the indicators to be assessed in relation to condition B3 to reflect the 'universal' view of a provider's obligations for the quality and standards in all of its courses. This would mean that the indicators we produce for a provider would include all the students it teaches and all the students it registers and all the students for whom it is the awarding body. This means, for example, that students registered at one provider and taught at another under a partnership arrangement would contribute to the indicators for both registered providers.
31. We are proposing this approach because it is important that we are able to identify material differences in performance in different aspects of a provider's provision, in order to better understand the outcomes for all students. We consider that there are a number of ways in which indicators could be constructed to achieve this universal view, and proposals on the presentation and disaggregation of the indicators will be set out in further consultation. We recognise that some of the ways in which we could do this would have the benefit of identifying differences in performance that might otherwise be hidden, but the disadvantage of introducing complexity and statistical uncertainty into our assessment of condition B3. For example, creating different sets of indicators (for each mode, level and subject of study, in aggregate and over the time series) that separately cover each population described in paragraph 29 would generate a substantial volume of information that may be challenging to interpret.
32. We welcome views on how an appropriate balance might be achieved between the volume and complexity of indicators and a method that allows us to identify 'pockets' of performance that are below a numerical baseline so that, in line with best regulatory practice and a risk-based approach, we can target regulatory action only where it is needed.

### **Indicators for transnational education**

33. During the initial registration process, data was not available to construct indicators to show the outcomes for students studying wholly outside the UK on courses which fall within the scope of the regulatory framework. We are now able to construct some of these indicators, to show continuation and completion outcomes in broad terms based on information returned via the aggregate offshore record from 2019-20 onwards. We propose that these indicators should be constructed at an aggregate level and included in the assessment of condition B3. This would allow us to regulate quality for these students, and to ensure that outcomes are above a minimum level of performance.

### **Indicators for non-recognised higher education**

34. In the longer term we aim to integrate non-recognised higher education provision into the coverage of our student outcomes indicators. Such non-recognised higher education falls within the scope of our regulatory functions, and this integration would mean that our approach to the regulation of student outcomes would apply on the same basis to those courses if they were delivered by a registered provider. However, it is not currently possible to construct indicators in relation to this provision, because data that is used to calculate student outcomes is incomplete and some of the concepts measured through our existing indicator definitions

may not be meaningful.<sup>23</sup> Once relevant data becomes available, we will consult further on its inclusion in our assessment of student outcomes.

35. In the interim we propose to include information about the overall numbers of students studying non-recognised higher education within the contextual data included in a provider's B3 workbook, so that our assessment is informed by the broad scale of this provision for any individual provider.

### **Consideration of different student characteristics**

36. We propose that continuation, completion and progression indicators will be split to show the performance of different student demographic groups within each level and mode of study for students studying for recognised higher education qualifications in the UK who are taught or registered by an English higher education provider. This would continue to show performance for a given demographic group in aggregate, over a time series of up to five years for which data exists for the provider, but would not provide information for that group separately for each year of the time series. To date these 'split indicators' have shown the performance within each indicator at paragraph 23, broken down as follows:
- a. Age.
  - b. Participation of Local Areas (POLAR) quintile.
  - c. English Indices of Multiple Deprivation quintile.
  - d. Ethnicity.
  - e. Disability.
  - f. Sex.
  - g. Domicile.
37. The split indicators at paragraphs 36a, d, e and f cover some protected characteristics under the Equality Act 2010. The split indicator at 36 b relates to the participation rates of local areas of young people.
38. The split indicator at 36c is the official measure of relative deprivation for small areas in England, which is based on seven different facets of deprivation including:
- income deprivation
  - employment deprivation
  - education, skills and training deprivation

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<sup>23</sup> Some of the data items used in the algorithms that calculate continuation rates are incomplete because of their optional status for non-recognised higher education students in the Education and Skills Funding Agency's collection of the individualised learner records. Students qualifying from such courses have also fallen outside the scope of the survey instruments used to understand graduates' employment and further study destinations. Notwithstanding data availability, we are aware that our existing indicator definitions may not align well with the structures and practicalities of some courses of non-recognised higher education.

- health deprivation and disability
- crime
- barriers to housing and services
- living environment deprivation.

39. We propose to construct the 'split indicators' based on data which is readily available to us and which forms the basis of our access and participation dashboard. They therefore represent a number of protected characteristics and other measures of disadvantage which are well established for measuring performance in access and participation, and are widely used by providers to assess their own performance.
40. We aim in all of our work to be evidence-based and never to lose sight of the individuality of each student. We are aware that the way in which students' characteristics combine can increase underrepresentation. For example, white British men and women from lower socioeconomic backgrounds are among the most underrepresented groups in higher education. As an alternative to the construction of 'split indicators' looking at single characteristics, we have considered the possibility of generating more granular, intersectional split indicators. This alternative has been discounted on the basis that the indicators generated would, for many providers, be too sparsely populated to be meaningful, and would less clearly support our consideration of protected characteristics required by the Equality Act 2010 and the Public Sector Equality Duty.
41. However, we welcome views on whether there are further characteristics, such as other protected characteristics listed in the Equality Act 2010, which we should consider including in the list of 'split indicators'. The construction of any additional splits based on student characteristics would be dependent on data availability, quality and reliability.
42. At this stage we do not propose to split each subject or partnership indicator by demographic group, because this would create a substantial number of data points that would be too small to form the basis of judgements. We are not currently proposing to split any indicators relating to transnational education by demographic group, because this would require increased data reporting and we do not wish to increase data burden in this area at this time.

### **Data sources for the indicators**

43. The indicators will be constructed from individualised student data returned by the provider to HESA student record collections (including the aggregate offshore record) or the Education and Skills Funding Agency (ESFA) on an annual basis, and through the Graduate Outcomes survey. Consecutive years of these data returns will be used, where possible, to construct indicators spanning the five most recent cohorts applicable to the given indicator definition. The proposed technical description and methodology for all indicators will be set out in further consultation. This data is currently collected in an established annual cycle, and we expect to consult on the more frequent collection of data in a forthcoming consultation on our data strategy.
44. A detailed description of the current methodology, algorithms and rebuild instructions for the indicators used in relation to condition B3 to date is available at [www.officeforstudents.org.uk/data-and-analysis/institutional-performance-measures/technical-](http://www.officeforstudents.org.uk/data-and-analysis/institutional-performance-measures/technical-)

documentation/. These definitions and algorithms draw upon the current specification of the HESA and ESFA data returns. The proposed technical description and methodology for all indicators to be used in the future will be set out in further consultation. We will continue to use the student data that providers return to HESA and ESFA in whatever forms these take, which means that in future we will transition to using the Data Futures<sup>24</sup> model for HESA student data returns. In doing so we would seek to map indicators as closely as possible to definitions established through this and future consultations, and would invite views on any significant departures from these definitions through further consultation if necessary.

45. For initial registration we constructed the indicator showing progression to professional employment or postgraduate study based on the Destination of Leavers from Higher Education survey, which was conducted for the final time for higher education leavers in academic year 2016-17. As this survey is no longer conducted, we propose to transition to the use of the Graduate Outcomes survey in our performance measures of graduate destinations. We are developing measures of providers' performance based on this instrument. We expect to consult on the detail of their construction in future consultation, but we propose that the indicator will not count as a positive outcome employment that is unlikely to have degree study as a prerequisite, as this is important to ensure that graduates are achieving outcomes consistent with the higher education qualification they have completed. This is consistent with the policy consulted on within the OfS's regulatory framework.
46. The longitudinal educational outcomes (LEO) dataset<sup>25</sup> is also available, and links higher education and tax data together to chart the transition of graduates from higher education to the workplace, and provides information about graduates' employment and income, and any benefits they claim. Indicators constructed from this dataset are currently feasible for UK-domiciled undergraduate students as supplementary indicators about graduate outcomes, and we will explore the production of indicators that would cover international and postgraduate cohorts during 2021. Such indicators might work together with rates of progression to managerial and professional employment or a higher level of study to provide a balance of interpretation about successful student outcomes beyond graduation, informed by the occupations, further study and earnings to which students progress. As an administrative data source, indicators drawn from the LEO dataset have the advantage of being more robust to issues of response bias. We welcome views on whether this data source should be used to construct further indicators in relation to graduate outcomes.

## **The approach we propose to take to setting numerical baselines**

47. The regulatory framework says that assessment of condition B3 will be made in relation to a minimum level of absolute performance in order to protect students. Because data indicators express student outcomes in numerical form, usually as a percentage of students who achieve a particular outcome, our view is that a minimum level of performance for student outcomes also needs to be expressed in a quantitative numerical form, because a qualitative description of a numerical outcome would not provide sufficient clarity to students, providers, and others about the minimum level of performance we expect to protect students. Our view is that setting

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<sup>24</sup> See [www.hesa.ac.uk/innovation/data-futures](http://www.hesa.ac.uk/innovation/data-futures). We expect to consult shortly on the frequency of data collection, although we expect the data model to remain stable.

<sup>25</sup> See [www.gov.uk/government/collections/statistics-higher-education-graduate-employment-and-earnings](http://www.gov.uk/government/collections/statistics-higher-education-graduate-employment-and-earnings).

numerical baselines is therefore the appropriate mechanism to express this regulatory standard.

48. We therefore propose to determine a numerical baseline for each of the continuation, completion and progression indicators, broken down for each mode and level of study. We do not propose to set a different numerical baseline for each subject within each mode or level of study, or for different types of partnership arrangements.
49. In setting numerical baselines for performance, our view is that we should be informed by:
  - a. The range of performance in the sector in relation to each indicator.
  - b. Our policy intention to set a high bar for quality and protect students from poor outcomes, including by setting higher more challenging minimum numerical baselines that apply to each indicator and all providers.
  - c. Our view of what a student, parent or member of the public and taxpayer might think was 'high quality' in relation to successful outcomes (we refer to this as the public interest test).
  - d. Statutory guidance from the Secretary of State issued under section 2(3) of HERA.
  - e. Equality considerations.
  - f. The OfS's general duties in section 2 of HERA.
50. The English higher education sector has a reputation for high quality, and we therefore consider it appropriate to take account of the performance of the sector as a whole in establishing a numerical baseline for each indicator.
51. We also propose that we consider our policy intention to set a high bar for quality and protect students from poor outcomes with higher and more challenging numerical baselines. In particular, we think it is important to set numerical baselines at a level that would appear to a student, a parent, a reasonable lay person, or the taxpayer, to represent a high quality baseline and so a minimum acceptable level of performance. For example, the numerical baseline we used during the initial registration process for continuation for full-time first degree courses was 75 per cent. In other words, the approach for initial registration accepted that a quarter of a provider's students could start a course and not progress into their second year of study. We do not consider that this level of performance would pass a public interest test on an ongoing basis.
52. In order to make sure our regulation is proportionate, we think it is appropriate to set any baseline with reference to the actual performance in the sector, but also balanced with the other factors listed at paragraph 49. Therefore, for example, a level of performance for continuation of 90 per cent is likely to appear to any reasonable person to be a good outcome and not represent any regulatory concern. However if, looking at the range of performance in the sector, all providers were actually achieving rates of 80 per cent, then this might suggest (particularly in the context that the sector is recognised as high quality and generally delivering good outcomes) that 90 per cent was too high for the numerical baseline.

53. As part of the initial registration process we considered the range of performance in the sector by looking at ‘sector-level charts’ as part of the process for establishing numerical baselines. These showed the performance of each provider (anonymously) for continuation and progression, for each mode and level of study. For the completion indicator, the charts showed the performance of each provider at each mode of study at both undergraduate and postgraduate level. Each point on the chart indicated the performance of an individual provider in aggregate terms based on the latest five years of data that was available. These point estimates of providers’ performance were plotted in a similar style to that used in HESA’s summaries of the UK Performance Indicators,<sup>26</sup> to give a visual representation of the range of performance in the sector.
54. We propose in this consultation that the numerical baselines should continue to be set by reference to the performance of the sector as a whole, and that we should use a range of data sources to understand the sector’s performance, which could include:
- a. ‘Sector charts’ as described in paragraph 53 based on absolute and unweighted performance, and associated summary statistics drawn from those distributions (for example sector median, upper and lower quartiles, etc.).
  - b. Sector distributions weighted by student population and characteristics and associated summary statistics (e.g. weighted sector median, upper and lower quartiles).
  - c. Sector distributions of benchmark values (and associated summary statistics).
  - d. Regression modelling of variations in performance across providers and different student demographic groups.
  - e. Aggregated sector data<sup>27</sup> that is now available to us.
55. This would allow us to look at a comprehensive range of evidence about performance in the sector, and use our regulatory judgement, considering the factors at paragraph 49 to determine where a proposed numerical baseline should be set. Looking at a broader range of data in this way would mean that we would not make any ‘adjustments’ to lower a baseline in order to accommodate the possible variation in performance based on student characteristics as we did during the initial registration process (see paragraph 60 below), and this is likely to result in higher numerical baselines than those we used during the initial registration process.
56. Our regulatory judgment would be central to the decision about where any numerical baseline should be set, with an emphasis on our policy intention to drive up low quality, and we would consult on this in a subsequent consultation.
57. We welcome views on how the range of sector-level performance should be taken into account when setting numerical baselines. For example, we could set the numerical baseline

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<sup>26</sup> See, for example, Chart 7 at [www.hesa.ac.uk/data-and-analysis/performance-indicators/non-continuation-summary-1819](http://www.hesa.ac.uk/data-and-analysis/performance-indicators/non-continuation-summary-1819).

<sup>27</sup> See [www.officeforstudents.org.uk/publications/registration-condition-b3-2020-sector-level-indicators/](http://www.officeforstudents.org.uk/publications/registration-condition-b3-2020-sector-level-indicators/)

at a level that would seek to improve the bottom 10-20 per cent of provider performance in the sector for a given indicator.

58. Subject to the outcomes of the current consultation, we would expect to consult further on the approach we propose to take to setting numerical baselines and the level at which we propose to set them. We will also set out detailed proposals about how performance against the indicators will be assessed in further consultation.

## **The approach we propose to take to students with different equality characteristics**

59. We know that performance for underrepresented groups and students with some protected characteristics can be lower than that for other groups. Setting numerical baselines at too high a level would create a risk that a provider with a high proportion of students from underrepresented groups and some students with protected characteristics would be unable to meet those baselines, and this could have a detrimental impact on the availability of higher education to such students. Considering the range of factors set out in paragraph 54 as we set numerical baselines will allow us to take these issues into account in our approach.
60. At initial registration we implemented an approach which made an adjustment to the level of performance where there would be no regulatory concern to take some account of the likely variance in performance that might be attributed to student characteristics, based on various analyses available to us at the time. We were concerned that making adjustments in this way introduced an element of benchmarking into the process of setting the numerical baselines, but we thought this was appropriate based on equality considerations. We then also took the context of an individual provider into account during the assessment process, and to some extent this resulted in some contextual factors being considered twice for an individual provider. As set out in paragraph 55 above, we do not propose to make adjustments to numerical baselines in this way in future.
61. An alternative approach would be to apply a different numerical baseline for different student demographic groups, to account for the known current variation in performance. However, this approach would require us to accept that it is appropriate for some students to experience weaker outcomes, most likely those from groups most underrepresented in higher education. This would not deliver a minimum acceptable level of performance for all students. Our regulation of access and participation is designed to close the gaps in outcomes delivered for different student groups, and accepting weaker outcomes for some students would not be consistent with delivering our regulatory objectives.
62. While the performance for different demographic student groups does currently vary, we are mindful that our policy ambition is that students from all backgrounds should be able to succeed. In other words, it is not sufficient for a provider to recruit large numbers of students from underrepresented groups. Those students must also have confidence that they will be able to achieve successful outcomes on the same basis as more advantaged students. We therefore expect a provider that recruits students from underrepresented groups to design and deliver a curriculum matched to their needs, and to fully support those students to succeed. This is particularly the case because there is evidence that starting higher education but not completing can have a more detrimental impact on an individual's earnings than if they had never started a higher education course.

63. The equality impact assessment undertaken for the introduction of the OfS's regulatory framework acknowledged that a policy approach that established minimum baselines based on absolute rather than benchmarked performance could be construed as creating a potential tension between quality and equality. However, it also recognised that a large part of the reason for a policy to increase quality is because students from underrepresented groups are disproportionately concentrated in providers with weaker outcomes. Increasing quality, therefore, should have an overall positive impact on these students. Overall, the impact assessment was that there would be a positive impact in this area.
64. We therefore propose that the performance of students from underrepresented groups and with protected characteristics should be assessed in relation to the same numerical baseline established for each indicator. This will ensure that all students are protected from low quality, including weak outcomes, by ensuring there is a minimum level of performance. In particular, this means that courses populated with students from underrepresented groups, and with protected characteristics, are held to the same minimum regulatory standard as courses populated with students from advantaged and more represented groups.
65. We do, however, propose to take into account the characteristics of a provider's students, and the comparative performance of different demographic groups of students within the provider, when its performance is assessed in relation to the numerical baselines. This will give an indication of whether or not outcomes delivered by the provider could potentially be a consequence of the characteristics of the students it recruits, and we will consider how well it is serving those students. For example, we will consider the performance of young students compared with mature, disabled and not-disabled, white and black, Asian and minority ethnic students, and students from the least and most disadvantaged areas.

## **The approach we propose to take to considering contextual factors**

66. We propose in paragraph 48 that there should continue to be numerical baselines for condition B3 that apply to all providers' absolute performance and that the assessment of condition B3 should heavily rely on this. However, we also propose that we should continue to give appropriate consideration contextual factors for an individual provider, as a way of ensuring we have properly interpreted its absolute performance. This would allow us to assess whether there are any contextual factors that might contribute to performance being below the numerical baseline and which may explain the absolute performance.
67. We propose to take the following contextual factors into account in our assessment:
- a. Evidence that a provider no longer delivers, or no longer plans to deliver, courses that are included in the indicators, and the reasons for ceasing the delivery of such courses.<sup>28</sup>

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<sup>28</sup> We recognise that setting numerical baselines for regulatory purposes may lead to providers changing their provision and discontinuing courses that perform poorly in order to avoid regulatory consequences, rather than seeking to improve the performance of those courses. We wish to avoid churn in courses and partnerships that are introduced to avoid regulatory consequences, and therefore we propose that a provider's behaviour in discontinuing courses or partnerships, and its reasons for ceasing delivery of courses or partnerships, will be considered a relevant factor in our overall assessment of condition B3 for registered providers.

- b. Any external factors outside of the provider's control that might affect performance in relation to the numerical baselines; for example, in the immediate future, any impact of the coronavirus pandemic on a provider's performance.
  - c. Evidence of any actions a provider has already taken to improve its performance in relation to numerical baselines, and the effectiveness of those actions.
  - d. Evidence of a provider's future plans to improve its performance in relation to numerical baselines, and the credibility of those plans.
68. Considering contextual factors in this way could mean that, if a provider's performance was below one or more numerical baselines, this could potentially be judged to be acceptable if there were contextual or other relevant factors that accounted for such performance.
69. We are interested in views about other contextual factors we should take into account and the weight that we should place on them. In combination, an assessment of a provider's absolute performance in relation to numerical baselines, together with appropriate consideration of a provider's context, will allow us to form a fair and robust view about its compliance with the requirements set out in this condition of registration. Subject to the outcomes of the current consultation, we would expect to consult further on how performance against the indicators will be assessed, and how we will take contextual factors into account.

# Annex C: Proposed indicators for monitoring quality and standards for registered providers

1. The regulatory framework says that the OfS will monitor compliance of individual providers with their conditions of registration by using:
  - lead indicators
  - reportable events
  - notifications from third parties, including whistle-blowers.
2. Our view is that this remains an appropriate approach to ensuring that monitoring is risk-based and that there is, in general terms, an appropriate balance between the regulatory burden that monitoring activity places on providers and our ability to regulate effectively in the interests of students. We are now consulting on how we should implement that general monitoring approach for the conditions that relate to quality and standards. In other words, we are setting out more detailed proposals for the indicators that we will use for general monitoring of the B conditions.

## Indicators

3. The regulatory framework says that we will identify a small number of lead indicators that will provide signals of change in a provider's circumstances or performance. Such change may signal that we need to consider whether the provider is at increased risk of a breach of one or more of its ongoing conditions of registration. The lead indicators are likely to show changes that might not, in themselves, reveal areas of weakness or concern for an individual provider, but simply flag possible increased risk. This means that when we use indicators for monitoring purposes, they are not determinative of any particular regulatory outcome for a provider: we do not use crude 'triggers' or performance thresholds to monitor or determine regulatory risk, preferring a more flexible approach that takes into account the context for an individual provider.
4. We propose to further develop the approach set out in the regulatory framework that uses indicators to identify where quality or standards may be at risk in an individual provider. We propose to use indicators, including but not limited to the following, because they signal something of relevance to one or more aspects of the definitions of 'quality' and 'standards' proposed in Table 1 of Annex A:
  - a. Admissions indicators such as:
    - i. Patterns of numbers of applications, offers and acceptances, including for students with different demographic characteristics.
    - ii. Patterns of student entry requirements and the qualifications profile of a provider's students on entry.
  - b. Student complaints:
    - i. Informal and formal complaints made using a provider's internal complaints process, and any redress made in response to these.

- ii. Cases considered by the Office of the Independent Adjudicator, and the outcomes of these.
- c. Data from national student surveys or from student polling.

For example, on the basis of the current National Student Survey<sup>29</sup>, we could use the question blocks relating to 'teaching on my course', 'learning outcomes', 'assessment and feedback', 'academic support', 'organisation and management' and 'learning resources'.

- d. The outcomes of relevant recent review activity by other regulators or bodies, for example the Office for Standards in Education, Children's Services and Skills or professional, statutory and regulatory bodies (PSRBs).
- e. Outcomes of the TEF.

We would expect to undertake further assessment or investigation of a provider if it receives a TEF award in the lowest available category (subject to consultation on the OfS's future approach to the TEF). We would also be likely to follow up any particular concerns about a provider identified by the TEF panel as a result of the TEF assessment process.

- f. Student outcomes indicators, as set out in paragraph 75 of the main consultation such as:
  - i. Continuation rates.
  - ii. Completion rates.
  - iii. Degree classification rates showing student attainment that may indicate grade inflation.
  - iv. Graduate employment rates, including progression to professional and managerial jobs and higher-level study.

- 5. We are able to construct these indicators from data that is already available to us for most providers and most courses and so would not need to impose additional regulatory burden in relation to data returns.
- 6. These indicators relate to a provider's performance on quality and standards matters. With the exception of the admissions indicators in paragraph 4a, they are generally lagging indicators. This means that they report to a greater or lesser extent on what happened in the past. The currency of the information they contain can range from just a few months out of date to a number of years out of date (for example, information on undergraduate degree classifications is available within a few months of the end of the relevant HESA year, but graduate outcomes survey results report on students who graduated at least 18 months previously).
- 7. Although the past may provide indicators of future risk, to overcome some of the disadvantages of lagged indicators we would use trend analysis where appropriate to identify the direction of travel for performance in an indicator. Because we want our selection of indicators to allow the identification of possible increased risk before this crystallises, we also

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<sup>29</sup> The OfS is currently undertaking a review of the NSS, one purpose of which is to ensure that we have the data we need to regulate effectively (see <https://www.gov.uk/government/publications/reducing-bureaucratic-burdens-higher-education/reducing-bureaucratic-burdens-on-research-innovation-and-higher-education>).

propose to use indicators for monitoring purposes that signal something about the contextual risk for a provider and how that might be changing. These might include, but not be limited to:

- a. Measures of the size and shape of a provider's higher education activity, such as:
    - i. The size and shape of its student population, and significant changes to these.
    - ii. The subjects, modes and levels it delivers, and significant changes to these.
    - iii. The extent of its delivery through partnership arrangements, and significant changes to this.
    - iv. The type and number of staff it employs, and the ratio of those staff to its students, and significant changes to these.
  - b. Information relating to a provider's operating model, such as:
    - i. Its audited, current and forecast financial position.
    - ii. Any concerns the OfS may have about the provider's compliance with management and governance conditions.
  - c. Information relating to the wider operating context for a provider that may have an impact on the quality and standards of that provider's higher education courses, for example:
    - i. Changes in the cost of borrowing.
    - ii. Increased pensions costs.
    - iii. Industrial action.
    - iv. A sudden drop in applications from international students from a particular territory that significantly affects the business model for a number of providers for which that is a key market.
8. These indicators of contextual risk provide us with important information about the context within which a provider's performance is taking place and allow us to properly interpret that performance. They are not things that, in themselves, are the object of regulation of quality and standards conditions. They relate both to the context a provider creates for itself through the choices it makes about its operating model, and the context created outside a provider's control in the wider operating environment. These are generally leading indicators in relation to quality and standards issues. In other words, they signal to us factors that could have a future impact on a provider's ability to satisfy our quality and standards requirements.

## **Reportable events**

9. The regulatory framework says that a registered provider is required to tell the OfS about matters that constitute 'reportable events'. Each provider is notified of the matters that should be reported in this way. Of the current list of reportable events, our view is that the following are particularly relevant to the proposed definitions of 'quality' and 'standards' set out in Table 1 of Annex A:
- changes in partnership arrangements
  - significant redundancy programmes

- loss of PSRB accreditation
  - significant changes to campuses, departments or subjects.
10. For similar reasons to those set out for contextual indicators in paragraph 8, matters with possible financial viability or sustainability implications may also be factors that could have a future impact on a provider's ability to satisfy our quality and standards requirements.
  11. In the context of quality and standards, some of these reportable events provide us with lagging signals. For example, a report from a provider that it has lost accreditation from a PSRB tells us that something has already happened that may be relevant to our quality and standards requirements. Others provide us with leading signals. For example, a report about a planned redundancy programme would be available to us ahead of any potential impact on students, and may trigger us to engage with the provider at an earlier point.
  12. We have identified other matters that could be included in the list of reportable events because they would tell us something important about quality and standards as we propose to define it in Table 1 of Annex A. These include:
    - a. Significant permanent changes to a provider's higher education provision, including new subject areas, modes or levels of delivery.
    - b. Changes to the algorithms a provider uses to calculate degree classifications, including changes to rules for discounting credit, either from the normal credit requirements for the award or from the calculation of degree classifications.
    - c. Refusal of a PSRB to accredit or recognise one or more of a provider's courses, or the initiation of an investigation by a PSRB.
    - d. The loss of senior staff responsible for the effective oversight of quality and standards, where a provider's operating model means that it is dependent on a small number of such staff.
    - e. Tuition fee refunds or compensation awarded to students as a result of complaints about the quality of teaching.
  13. If we were to include these in the list of reportable events, they would provide us with leading signals relevant to our quality and standards requirements.
  14. We recognise that extending the list of reportable events in this way may create additional regulatory burden for providers. Our intention is to find an appropriate balance between such burden and being able to identify in advance likely breaches of quality and standards requirements.

### **Third-party notifications**

15. We routinely receive notifications from students and others, including whistle-blowers, that are relevant to our monitoring of a provider's compliance with the B conditions. The OfS was not given powers to resolve issues for students or others, not least because the Office of the Independent Adjudicator makes decisions about complaints and redress for individual

students. Nevertheless, notifications can provide important information about quality and standards in a provider.

16. We also identify information about a provider from press coverage or social media, and we routinely receive information from other agencies or organisations. We treat this information as we would treat notifications from students or others.
17. Notifications may provide lagging signals because the notifier is telling us about something that they think has already gone wrong in a provider, but they may also provide lead signals in relation to something that has not yet happened. Notifications can therefore provide early indication of increased risk of breach of one of the B conditions. This means that we need to make a judgement about whether and how we respond to an individual notification, taking into account the nature of the information. Where a notification is particularly significant, or adds to an existing pattern of information about a provider, we are more likely to follow up with the provider. We might not otherwise take any further action. We do not routinely report back to a notifier with information about what action, if any, we have taken in response to their notification.
18. Our view is that this remains an appropriate approach to considering third-party notifications. We will continue to consider that the patterns of information contained in notifications that relate to quality and standards for an individual provider as part of the picture created by indicators and reportable events.

## Annex D: Relationship between minimum baseline requirements set out in the B conditions and other aspects of regulation

1. These proposals form one part of the OfS's wider work on quality. The current consultation relates to the minimum baseline requirements we impose through conditions of registration; in other words, the requirements that all providers are required to satisfy to be, and remain, registered. The regulatory framework also says that the OfS will incentivise excellence in learning and teaching above this minimum baseline through the TEF. Taken together, these two parts of our regulation mean that we are able to ensure that students are protected through the imposition of a minimum regulated baseline and that providers are free to decide whether and how they want to perform above this baseline. We are clear that there is performance across the sector that sits comfortably above the minimum baseline – this is what we would expect to see in a high quality sector.
2. We expect to consult on our future approach to the TEF in due course.<sup>30</sup> As we formulate those proposals we will want to ensure that they form part of a coherent whole approach to quality when placed alongside the proposals in the current consultation. This alignment has the following dimensions:
  - a. The way we structure our definitions of 'quality' and 'standards' for the purposes of setting baseline requirements (see Annex A) needs to be coherent with the components assessed by the TEF above that baseline. This is important because providers need to be clear about what is required to satisfy the baseline requirements in the B conditions, and then the performance above this that would lead to particular TEF awards.
  - b. The way we use data to construct indicators, and the indicators that we choose to use for baseline regulation and TEF assessment, needs to be consistent, or inconsistencies explained. The indicators we propose to use in the assessment of condition B3 (see Annex B) cover similar outcomes as have – to date – been measured through the TEF. To ensure the coherence and proportionality of our regulatory activities, and subject to further consultation on both our approach to condition B3 and to the TEF, we intend to align the uses and definitions of the measures within our assessments of condition B3 and TEF, to the extent that this is appropriate and practical (for example, TEF only relates to undergraduate provision, whereas our assessment of condition B3 covers both undergraduate and postgraduate courses).
  - c. The consequences of weak performance in relation to the B conditions, or in a TEF assessment, need to create incentives for improvement for providers that are below the minimum baseline or performing weakly in TEF. Annex C contains proposals for the way in which weak TEF outcomes for a provider would result in additional scrutiny of that provider's ongoing compliance with the minimum baseline requirements contained in the B conditions.
3. In addition, there is a relationship between our regulation of quality (above and below the baseline) and our regulation of access and participation plans. Our regulation in these core

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<sup>30</sup> See [www.officeforstudents.org.uk/advice-and-guidance/teaching/future-of-the-tef/](http://www.officeforstudents.org.uk/advice-and-guidance/teaching/future-of-the-tef/).

areas is intended to be mutually reinforcing for the benefit of students. We expect higher education providers to take all reasonable steps to comply with their approved access and participation plans, which are designed to reduce gaps between underrepresented student groups and their peers at that provider, whether those gaps relate to access or outcomes. At the same time, we set a minimum baseline requirement for quality, which includes a minimum level for student outcomes, and applies to students from all backgrounds.

- Our view is therefore that we need to set out how these elements of regulation fit together to allow the OfS to deliver its regulatory objectives. Based on the approach to TEF to date, Figure 1 shows in general terms how the elements of our proposed definitions of baseline quality and standards fit with TEF and APP submissions and assessments.

**Figure 1: Relationship between minimum baseline requirements for quality and standards, requirements for access and participation plans, and current approach to TEF**

Access and admissions	Course content, structure and delivery	Resources and academic support	Successful outcomes	Secure standards
	TEF: teaching quality above the baseline	TEF: learning environment above the baseline	TEF: successful outcomes above the baseline	
Access and participation plans: equality of opportunity in relation to access	Access and participation plans: equality of opportunity in relation to participation	Access and participation plans: equality of opportunity in relation to participation	Access and participation plans: equality of opportunity in relation to participation	
Baseline B conditions	Baseline B conditions	Baseline B conditions	Baseline B conditions	Baseline B conditions

## Annex E: Consultation questions

### Questions relating to Proposal 1

**Question 1a:** Do you agree or disagree with the proposed definitions of 'quality' and 'standards' set out in Table 1 of Annex A and that this should be used to express minimum baseline requirements for quality and standards in revised B conditions?

**Question 1b:** Do you have any comments about how the proposed definitions of quality and standards set out in Table 1 of Annex A should be assessed for individual providers?

**Question 1c:** Do you agree or disagree with the proposal in paragraphs 41 to 43 to express initial requirements differently from the equivalent ongoing requirement for providers seeking registration?

### Questions relating to Proposal 2

**Question 2a:** Do you agree or disagree with the proposed approach to assessing student outcomes set out in Annex B?

**Question 2b:** Are there any other quantitative measures of student outcomes that we should consider in addition to continuation, completion and progression (see Annex B paragraph 18)?

**Question 2c:** Do you agree or disagree with the proposals for the levels of study at which indicators should be constructed? Should any additional indicators be considered (see Annex B paragraph 25)?

**Question 2d:** Do you have any comments about an appropriate balance between the volume and complexity of indicators and a method that allows us to identify 'pockets' of performance that are below a numerical baseline (see Annex B paragraph 32)?

**Question 2e:** Do you agree or disagree with the demographic characteristics we propose to use (see Annex B paragraph 36)? Are there further demographic characteristics which we should consider including in the list of 'split indicators'?

**Question 2f:** Do you agree or disagree that the longitudinal educational outcomes dataset should be used to provide further indicators in relation to graduate outcomes (see Annex B paragraph 46)?

**Question 2g:** Do you have any comments about how the range of sector-level performance should be taken into account in setting numerical baselines (see Annex B paragraph 57)?

**Question 2h:** Do you have any comments about the other contextual factors that should be taken into account and the weight that should be placed on them (see Annex B paragraph 68)?

### Questions relating to proposal 3

**Question 3:** Do you agree or disagree with the proposals in Annex C for monitoring ongoing compliance with regulatory requirements for quality and standards?

### Questions relating to proposal 4

**Question 4:** Do you agree or disagree with the proposals in paragraphs 86 to 101 for our approach to intervention and gathering further information about concerns about quality and standards?

## Questions relating to all proposals

**Question 5:** Do you have any comments about any unintended consequences of these proposals, for example for particular types of provider or course or for any particular types of student?

**Question 6:** Do you have any comments about the potential impact of these proposals on individuals on the basis of their protected characteristics?

**Question 7:** Do you have any comments about where regulatory burden could be reduced?

**Question 8:** Do you have any other comments?

## Annex F: Consideration of alternative proposals

1. In formulating the proposals in this consultation we have considered alternative approaches. These are summarised in this annex.

### **Make no changes to the current approach and apply the requirements currently set out in the regulatory framework**

2. We have considered whether it is necessary to make any changes at all to our approach to regulating quality and standards. We have discounted the approach of not doing so, because our experience of regulating in this area over the past two years leads us to conclude that changes are necessary if we are to deliver our regulatory objectives and protect the interests of students and taxpayers.
3. In particular, we consider that our approach to regulating student outcomes, as set out in condition B3, requires further consultation. This is because we set numerical baselines during the initial registration process at a level more generous than would be consistent with a high quality sector, and this means that we accepted performance from some providers that was of concern. While our assessment considered variation within a provider's aggregate performance at different levels and modes of study, we did not look at variation in other areas, such as at subject level. We also consider that it is necessary to consult now on the approach we use to make judgements about whether condition B3 is satisfied by an individual provider. This approach had a direct impact on students: on the basis of the most recent data for registered providers, there were almost 65,000 students in 2018-19 on courses that would not have met the numerical baselines we used for registration if we had assessed each of those courses against the relevant baseline. This means that around 3 per cent of the total student population in registered providers in that year were on courses that did not meet the generous minimum baseline we had put in place.
4. More recently, not least as a result of the disruption caused by the coronavirus pandemic, we have considered whether we need to rebalance our approach to be better able to anticipate risks to quality and standards, either for individual providers or for the sector as a whole. Our focus to date has generally been on student outcomes. Requiring a minimum level of outcomes for students from all backgrounds will remain a central part of our regulatory approach, but we now want to ensure that our monitoring approach allows us to recognise signs of badly designed or delivered courses, or weakness in academic support, or digital poverty. We also want to embed the use of indicators of future risk that may arise from the operating context for an individual provider. In the context of the pandemic we have needed more real-time access to information about contextual risk factors for an individual provider, for example information about local public health restrictions, or about courses that may be less easily delivered online. We have also followed up more quickly and comprehensively in response to notifications from students and others, adjusting our approach to intervention to reflect a provider's context. Our view is that the current proposals are necessary to embed these aspects of our temporary approach in a systematic way into our more permanent monitoring arrangements.
5. The proposals also further our commitment to reducing regulatory burden for those providers that are not at increased risk of breaching one or more of the B conditions.

## **Consult only on a proposed approach to regulating student outcomes**

6. As set out in paragraphs 2 to 5 of this annex, we need to consult on our detailed operational approach to assessing student outcomes. We have, however, considered whether the other elements of this consultation are necessary at this time. Our experience so far of implementing the regulatory framework, including but not exclusively our experience of regulating during the period of the coronavirus pandemic, leads us to conclude that these proposals are timely. Further clarity in the way that the requirements of the B conditions are expressed, as well as further clarity about our approach for registration and monitoring of providers, will enable us to rebalance our approach to be better able to anticipate risks to quality and standards, either for individual providers or for the sector as a whole. There is also a need to extend the sector-recognised standards to set out minimum standards for different classes of degree in response to public concerns about grade inflation.

## **Make proposals for more substantive changes to the general approach to monitoring and intervention set out in the regulatory framework**

7. The proposals in the consultation are designed to work within the general approach to monitoring and intervention set out in the regulatory framework. We have considered whether we should propose more substantive changes to that general approach as it relates to the regulation of quality and standards. For example, we could move away from a monitoring approach that relies on indicators, reportable events and notifications, to one that involves scheduled cyclical quality review for all providers, regardless of our assessment of risk. Our view is that the general risk-based approach contained in the regulatory framework remains appropriate and proportionate, allowing us to identify and follow up on particular areas of concern.
8. A risk based-approach avoids detailed and burdensome assessment of providers which is not necessary if the risks to quality and standards are low, and allows regulatory action to be targeted towards providers and issues where the evidence suggests there are concerns that require further investigation.

# Annex G: Matters to which we have had regard in reaching our proposals

## The OfS's general duties

1. In formulating these proposals, the OfS has had regard to its general duties as set out in section 2 of HERA – these are reproduced in Annex H. We consider that the proposals in this consultation are particularly relevant to general duties (a), (b), (c), (d), (e) and (g), which relate to: institutional autonomy; quality, choice and opportunities for students; competition where this is in the interests of students; value for money; equality of opportunity; and best regulatory practice.
2. In formulating these proposals, we have given particular weight to (b), (d) and (e): promoting quality, choice and opportunities for students; value for money; and equality of opportunity.
3. The OfS's regulatory objectives reflect the things that matter most to all students: high quality courses, successful outcomes, and the ongoing value of their qualifications. In the circumstances where a provider seeking registration, or already registered, is not meeting these objectives for its students, it is important that the OfS can intervene to ensure that current and future students are not exposed to courses of low quality. Students making choices about what and where to study need to be confident that the regulatory system ensures that they are able to choose from a range of providers and courses that meet minimum regulatory standards. Opportunities for study are not meaningful if students are able to choose low quality courses delivering weak outcomes, or to continue on such courses, because the regulatory system has endorsed such performance. Neither are they meaningful if the qualifications awarded at the end of a course are not reliable and do not hold their value over time. Our provisional judgement is that this means that the interests of students outweigh the interests of a provider in this situation, and that an approach to regulating quality and standards that involves setting clear qualitative and quantitative minimum baselines for performance is an appropriate way to protect students' interests.
4. Value for money in the provision of higher education is important for both students and the taxpayer. Students normally pay significant sums for their higher education and incur debt for tuition fees and maintenance costs whether or not the course, for example, is up-to-date, provides educational challenge, is appropriately resourced, and delivers good outcomes. Investing in a higher education course that is of low quality, delivers weak outcomes, or results in a qualification that is not reliable, is unlikely to represent value for money for students. Similarly, the taxpayer contributes significantly to higher education through the provision of government-backed student loans and, for some providers, public grant funding. This investment is unlikely to represent value for money if, for example, courses are of low quality, continuation rates are low and students do not proceed to managerial and professional employment or further study. To protect the interests of students and taxpayers, our provisional judgement is that it is appropriate to regulate quality and standards in the way described in this consultation to ensure that student and taxpayer investment is focused on providers and courses that are high quality and deliver successful outcomes and reliable qualifications.

5. The OfS's approach to regulation is designed to promote equality of opportunity in connection with access to, and participation in, higher education. This means that we are concerned with ensuring that students from underrepresented groups are able to access higher education, and also to succeed on and beyond their courses. Our proposed definition of 'quality' is designed to ensure that students from all backgrounds are admitted to a course for which they have the potential to succeed and that course is designed and delivered effectively for all students. Our proposed approach to the regulation of quality and standards would also include the use of a numerical baseline of performance in relation to student outcomes that applied to all providers, regardless of the type of students they recruit. We recognise that this could result in a provider that recruits significant numbers of students from underrepresented groups failing to satisfy the condition. In turn, this would mean that those students would not be able to access that provider's courses. In that context, there would be reduced choice for those students.
6. However, access for underrepresented groups is only one part of the OfS's approach. We consider it equally important that students from underrepresented groups are able to succeed when they enter higher education, and to do so at the same rates as students from more represented groups. The cost in financial and personal terms of being exposed to a badly designed course or receiving inadequate support, and failing to complete or progress to managerial and professional employment or further study, is significant for any student. For students from underrepresented groups, the cost may be more significant because there may be fewer choices available to them. Our view is that a provider that recruits students from such backgrounds is obliged to ensure that they have a high quality academic experience and successful outcomes on the same basis as students from more advantaged backgrounds.
7. Our view is therefore that an approach to regulating student outcomes that resulted in setting a lower regulatory standard for students from underrepresented groups would risk baking their disadvantage into the regulatory system. This would not represent equality of opportunity for such students. The approach proposed in this consultation in relation to student outcomes is therefore to implement the policy in the regulatory framework and set numerical baselines, take a provider's context into account, but not vary baselines for a provider that recruits students from underrepresented groups.
8. In formulating these proposals, we consider general duties (a), (c) and (g) important, but have given less weight to these.
9. The OfS is required to have regard to the need to protect institutional autonomy. It does not, however, have an absolute obligation to protect the autonomy of providers. Our proposals generally take a principles- and outcomes-based approach to setting minimum baseline requirements for quality and standards, because using rigid rules-based mechanisms in relation to qualitative requirements would risk pushing providers to adopt a particular approach to the way they design and deliver higher education courses and support their students, and would inhibit innovation. We do not consider that this would be in the interests of students or of providers themselves, not least because we understand the importance of institutional autonomy in relation to quality and standards. Where we consider that it makes sense to adopt a more rules-based approach, we are proposing to do so: our proposed requirements for student outcomes and standards can be expressed a way that provides more certainty for providers about the performance required. In that sense, the general approach set out in the regulatory framework and expanded on in this consultation attaches weight to institutional

autonomy. But we are giving weight to autonomy insofar as this is consistent with the need to protect the interests of students and, in particular, students from underrepresented groups. Where the quality of a provider's courses is of concern, including where the outcomes delivered for its students are below a minimum acceptable baseline, we propose that its autonomy is likely to carry less weight than the interests of current and future students.

10. We have particularly considered institutional autonomy in the context of our proposal to continue to impose a condition of registration that relates to standards. Our view is that it remains necessary to regulate standards on the basis set out in HERA in relation to defined sector-recognised standards, because the credibility of qualifications awarded to students remains an essential feature of the higher education sector, both within the UK and internationally. Degree awarding bodies remain responsible for the standard of their awards and we would expect them to discharge that responsibility effectively. Our proposal to impose a condition of registration in this area would, however, allow us to intervene where standards were not maintained.
11. The OfS is required to have regard to the need to encourage competition, where that competition is in the interests of students and employers. Competition could be encouraged by removing regulatory barriers such that any provider is able to compete for students, regardless of the quality of its courses, the outcomes delivered for students, or the credibility of the qualifications its students receive. However, our view is that such competition would not be in the interests of students because they are not generally sophisticated consumers able to make unaided choices about what and where to study. This is particularly the case for students from underrepresented groups, or with protected characteristics, who may not have access to the information, advice and guidance needed to make the right choice for them. The role of the regulator in this context is to set minimum requirements for quality and standards, to ensure that students are able to choose from a variety of providers and courses that meet that minimum regulatory standards.
12. Our proposal to ensure that the quality and standards requirements placed on a new provider seeking registration are specified in a way that takes account of the context for a provider that has not previously delivered higher education is designed to encourage competition by reducing regulatory barriers for such providers.
13. We have considered the principles of best regulatory practice and, in particular, considerations of proportionality. We consider the proposed approach set out in this consultation to be proportionate and appropriate in ensuring that the OfS can protect the interests of students and balance this with the interests of the provider. We have given particular consideration to the proportionality of our proposals, to ensure that regulatory attention is focused on those providers that represent most regulatory risk.

## **The Public Sector Equality Duty**

14. We have had regard to Schedule 1, paragraph 21 of HERA, which extends the Equality Act 2010, and therefore the Public Sector Equality Duty, to the OfS. This requires the OfS to have due regard to eliminating unlawful discrimination, foster good relations between different groups and take steps to advance equality of opportunity. Related to this, we have had regard

to our published equality and diversity objectives and action plan,<sup>31</sup> in particular the following objectives:

- a. Objective 4, which states that the OfS will work to address the risk of some students not receiving a safe, healthy and inclusive higher education experience. It lists as a priority ‘implementing the initial and ongoing conditions of registration for quality to drive a high-quality academic experience for all students, giving explicit attention to the outcomes for students from underrepresented groups.’
  - b. Objective 1, which states that the OfS will develop, implement and consult on our equality, diversity and inclusion objectives, evidence base, impact assessments and action plan to ensure successful implementation of our Public Sector Equality Duty.
  - c. Objective 3, which states that the OfS will challenge the sector to significantly reduce gaps in access, success and progression for students from all backgrounds and identities and across all disciplines.
  - d. Objective 5, which states that the OfS will work to reduce the risk that some students are prevented from maximising their outcomes through their higher education experience and therefore do not maximise their potential in terms of employment or further study.
15. We have also had regard to the Equality Impact Assessment conducted in relation to the OfS’s regulatory framework,<sup>32</sup> which states that the impact of the quality and standards conditions is assessed as positive, in particular because the regulatory framework frames these conditions in a way designed to achieve a positive impact on students with protected characteristics and from underrepresented groups.
16. We will continue to have due regard for our obligations under the Equality Act 2010, as we consider responses to this consultation and as we subsequently bring forward more detailed proposals for our approach to quality and standards.

## **Guidance issued by the Secretary of State**

17. We have had regard to guidance issued to the OfS by the Secretary of State under section 2(3) of HERA, and specifically the following guidance:<sup>33</sup>
- a. ‘Strategic guidance to the OfS’, 7 June 2019.
  - b. ‘Strategic Guidance to the OfS: Priorities for financial year 2019-20’ (27 February 2019).
  - c. ‘Supplementary strategic guidance to the OfS’ (16 September 2019).

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<sup>31</sup> Our equality and diversity statement and objectives, and our equality and diversity action plan, are available at [www.officeforstudents.org.uk/about/equality-and-diversity/](http://www.officeforstudents.org.uk/about/equality-and-diversity/).

<sup>32</sup> See [www.officeforstudents.org.uk/publications/equality-impact-assessment-regulatory-framework-for-higher-education/](http://www.officeforstudents.org.uk/publications/equality-impact-assessment-regulatory-framework-for-higher-education/).

<sup>33</sup> All guidance cited is available at [www.officeforstudents.org.uk/advice-and-guidance/regulation/guidance-from-government/](http://www.officeforstudents.org.uk/advice-and-guidance/regulation/guidance-from-government/).

- d. 'Additional teaching grant and funding/reducing the bureaucratic burden on providers' (24 September 2020).
18. We have specifically had regard to the emphasis here on the importance of regulating the quality of higher education in the sector; for example, the Secretary of State's comments in the Supplementary Strategic Guidance of 16 September 2019 that 'I firmly believe that [higher education] has the power to change lives but this is only the case when students can be sure that they are receiving a high quality education and can be confident of the value of their and government investment.' We have also had regard to the Secretary of State's support in that guidance for the OfS revisiting its quality baselines and his request that the OfS develop 'even more rigorous and demanding quality requirements,' and also regard to the earlier strategic guidance published in February 2019, in which the Secretary of State requested that the OfS should 'keep under review the provisions within the regulatory framework for ensuring effective protection of students' against a range of risks, including risks to the 'continuation and quality of study'.
19. With reference to grade inflation, we have had regard to the strategic guidance published in June 2019, in which the Secretary of State called on the OfS to 'support and challenge the sector to eliminate artificial grade inflation and to ensure that consistent standards are being applied across the sector', as well as 'Strategic guidance to the OfS: Priorities for financial year 2018-19' (20 February 2018), where the Secretary of State called upon the OfS 'to entrench the quality and standards that students have a right to expect' and for the OfS to challenge grade inflation 'wherever it occurs'.
20. We have also had regard to the Minister of State's comments in her strategic guidance of September 2020 that 'there is now an opportunity to consider how we can continue to reduce the bureaucratic burden on providers for the long term, enabling them to continue to focus on delivering high quality outcomes for students next year and beyond, while also ensuring you are equipped to deliver the range of functions granted to you under the Higher Education and Research Act 2017'.

## **The Regulators' Code**

21. We have had regard to the Regulators' Code. Section 3 of the code is particularly relevant, which discusses the need to base regulatory activities on risk:
  - a. Paragraph 3.1 provides for regulators to use an evidence-based approach to determine priority risks and allocate resources where most effective.
  - b. Paragraph 3.2 provides for regulators to consider risk at every stage of the decision-making process and choose the most appropriate type of intervention, using a targeted approach.
  - c. Paragraph 3.5 provides for regulators to review the effectiveness of their activities and make necessary adjustments accordingly.
22. In Section 1 of the code, paragraph 1.1 is also particularly relevant. This requires regulators to have due regard for avoiding the imposition of unnecessary regulatory burdens through their regulatory activities.
23. We consider that our proposal particularly encapsulates these aspects of the code.



# Annex H: Section 2 of the Higher Education and Research Act 2017

## 2. General duties

1. In performing its functions, the OfS must have regard to –
  - a. the need to protect the institutional autonomy of English higher education providers,
  - b. the need to promote quality, and greater choice and opportunities for students, in the provision of higher education by English higher education providers,
  - c. the need to encourage competition between English higher education providers in connection with the provision of higher education where that competition is in the interests of students and employers, while also having regard to the benefits for students and employers resulting from collaboration between such providers,
  - d. the need to promote value for money in the provision of higher education by English higher education providers,
  - e. the need to promote equality of opportunity in connection with access to and participation in higher education provided by English higher education providers,
  - f. the need to use the OfS's resources in an efficient, effective and economic way, and
  - g. so far as relevant, the principles of best regulatory practice, including the principles that regulatory activities should be –
    - i. transparent, accountable, proportionate and consistent, and
    - ii. targeted only at cases in which action is needed.
2. The reference in subsection (1)(b) to choice in the provision of higher education by English higher education providers includes choice amongst a diverse range of—
  - a. types of provider,
  - b. higher education courses, and
  - c. means by which they are provided (for example, full-time or part-time study, distance learning or accelerated courses).
3. In performing its functions, including its duties under subsection (1), the OfS must have regard to guidance given to it by the Secretary of State.
4. In giving such guidance, the Secretary of State must have regard to the need to protect the institutional autonomy of English higher education providers.
5. The guidance may, in particular, be framed by reference to particular courses of study but, whether or not the guidance is framed in that way, it must not relate to—

- a. particular parts of courses of study,
  - b. the content of such courses,
  - c. the manner in which they are taught, supervised or assessed,
  - d. the criteria for the selection, appointment or dismissal of academic staff, or how they are applied, or
  - e. the criteria for the admission of students, or how they are applied.
6. Guidance framed by reference to a particular course of study must not guide the OfS to perform a function in a way which prohibits or requires the provision of a particular course of study.
7. Guidance given by the Secretary of State to the OfS which relates to English higher education providers must apply to such providers generally or to a description of such providers.
8. In this Part, 'the institutional autonomy of English higher education providers' means –
- a. the freedom of English higher education providers within the law to conduct their day to day management in an effective and competent way,
  - b. the freedom of English higher education providers –
    - i. to determine the content of particular courses and the manner in which they are taught, supervised and assessed,
    - ii. to determine the criteria for the selection, appointment and dismissal of academic staff and apply those criteria in particular cases, and
    - iii. to determine the criteria for the admission of students and apply those criteria in particular cases, and
  - c. the freedom within the law of academic staff at English higher education providers –
    - i. to question and test received wisdom, and
    - ii. 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 providers.



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