

Office for
Students



Funding for 2019-20

Consultation on terms and conditions
and method

Reference OfS 2019.02

Enquiries to recurrentgrant@officeforstudents.org.uk

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Summary

1. This document invites comments on draft terms and conditions of funding for academic year 2019-20 for registered higher education providers in receipt of financial support from the OfS under Section 39(1) of the Higher Education and Research Act 2017. The draft terms and conditions are provided as Annex A and paragraphs 15 to 20 set out the approach we have taken in developing them. We also invite comment on a revised approach, set out in paragraphs 21 to 26, relating to recruitment against intake targets for pre-registration medical and dental courses.
2. In developing these terms and conditions, we have considered carefully how they interact with the conditions of registration that apply to providers in the Approved (fee cap) category and sought to minimise any overlap between them. Where requirements are a condition of registration, we have sought to avoid replicating them as conditions of funding. The terms and conditions of funding are therefore significantly reduced compared to those that applied up to 31 July 2018, and focus on:
 - a. The uses to which providers may apply OfS funding.
 - b. The circumstances under which we may recalculate and adjust funding.
 - c. A small number of requirements relating to specific grants, including eligibility criteria for them.
3. Paragraphs 27 to 38 provide further information about, and invite comment on, our approach to funding for 2019-20, in particular for formula-based capital grants.
4. Please email your comments on the revised terms and conditions and approach to funding set out in this document to recurrentgrant@officeforstudents.org.uk for receipt **by noon on Monday 11 March 2019**. Following consultation, we will publish the terms and conditions of funding for 2019-20 in spring 2019.

Introduction

5. During the transition period from 1 April 2018 to 31 July 2019, the Office for Students (OfS) has been distributing funding to providers under powers that formerly applied to the Higher Education Funding Council for England (HEFCE) arising from the Further and Higher Education Act 1992. Our direct funding powers have been limited during this period to the same teaching and related activities and to the same categories of providers as applied under HEFCE.
6. From 1 August 2019, the OfS's regulatory framework comes into full effect. We will fund providers under powers arising from the Higher Education and Research Act 2017 (HERA). In particular, section 39(1) of HERA¹ provides us with broad powers to fund education, and related facilities and activities, at registered providers that are 'eligible higher education providers' – that is, providers in the Approved (fee cap) category on the OfS Register².
7. Being registered as an Approved (fee cap) provider is a prerequisite for a provider to be eligible for OfS funding under Section 39(1) of HERA. The main requirements that OfS places on them arise from the general ongoing conditions of registration that apply to them as Approved (fee cap) providers. These are set out in the OfS regulatory framework for higher education in England³ and in any specific ongoing conditions of registration that additionally apply to a provider, as separately notified to it (whether or not such specific conditions are published on the OfS's Register).
8. Under section 41 of HERA, financial support provided by the OfS can be made on such terms and conditions as it considers appropriate, but before determining them, the OfS must consult such persons as it considers appropriate. This document sets out (at Annex A) draft terms and conditions that will apply to financial support for providers made under Section 39(1) of HERA for 2019-20 and invites comments on them.
9. Terms and conditions of OfS funding are supplementary to any conditions of registration that apply. However, condition of registration G2 requires the provider to comply with any terms and conditions that, under sections 41(1) and/or 94(2) of HERA, are attached to financial support received from the OfS and UK Research and Innovation (UKRI). A breach by a provider of terms and conditions of OfS funding may therefore be a breach of this condition of registration.
10. Under Section 39(2) of HERA, the OfS is also empowered to make grants, loans or other payments to any person in respect of expenditure incurred, or to be incurred, in relation to the provision of services as described in that subsection. Such financial support will not necessarily be to providers in the Approved (fee cap) part of the OfS's Register; thus conditions of registration may not apply, or may apply differently, to recipients of such financial support. Thus, terms and conditions of any financial support provided under Section 39(2) of HERA will be specified separately – the draft terms and conditions at Annex A do not set them out.

¹ See www.legislation.gov.uk/ukpga/2017/29/part/1/crossheading/powers-to-give-financial-support/enacted.

² See www.officeforstudents.org.uk/advice-and-guidance/the-register/the-ofs-register/.

³ See www.officeforstudents.org.uk/publications/securing-student-success-regulatory-framework-for-higher-education-in-england/.

11. In August 2018, we published 'Funding for academic year 2019-20: Approach and data collection' (OfS 2018.31)⁴. This set out, and invited comment on, our approach to funding for 2019-20. It explained that this would be transitional, because two major reviews of funding would not be complete in time to inform these allocations. These are the government's review of post-18 education and funding⁵, and a fundamental review of our own funding method. We will consult providers and others on the development of our funding methods for future years. In the meantime, we are continuing to apply existing funding methods until our review is complete.
12. This document provides further information about aspects of our approach to funding, including formula-based capital grants and invites further comment on them.
13. OfS recurrent and formula grants to providers for 2019-20 will first be announced in spring 2019. OfS 2018.31 set out dates by which providers should submit their applications to join the OfS's Register if they wish to receive public grant funding for 2019-20. We cannot guarantee funding in 2019-20 for providers that are not registered in the Approved (fee cap) category in time for inclusion in that grant announcement. But, subject to us having sufficient budget to do so, we will nevertheless look to make recurrent grant allocations for the 2019-20 academic year to providers that become newly registered in the Approved (fee cap) category later. We will make budgetary provision for this so as to avoid having to review allocations for providers whose grant has already been announced. We expect to announce updated recurrent and formula capital grants in October 2019, and aim to include in that announcement any providers that are registered in the Approved (fee cap) category on **Friday 20 September 2019**.
14. Providers that have not already done so are advised to submit applications as soon as possible if they wish to secure the public funding benefits of registration in time for the 2019-20 academic year. Providers will also need to have submitted the necessary student data to inform funding calculations⁶ if they are to be included in grant allocations. Providers will not receive payments in relation to months of the academic year during which they are not registered in the Approved (fee cap) part of the OfS's Register.

⁴ See www.officeforstudents.org.uk/publications/funding-for-academic-year-2019-20-approach-and-data-collection/.

⁵ See www.gov.uk/government/publications/review-of-post-18-education-and-funding-terms-of-reference.

⁶ The data required will be completion of one of the HESES18, HEIFES18 or HESF19 surveys (where not already provided), to be agreed with the OfS to reflect the provider's particular circumstances. Further information about these surveys is available at www.officeforstudents.org.uk/data-and-analysis/data-collection/.

Terms and conditions of funding for 2019-20

15. The draft terms and conditions of funding for 2019-20 set out at Annex A apply to financial support to eligible higher education providers – those in the Approved (fee cap) category on the OfS's register – that we will provide under Section 39(1) of HERA. They do not apply to financial support provided under any other part of HERA. The draft at Annex A sets out proposed wording as far as we can specify it at the time of writing, but includes references to documents that have not yet been issued, including the forthcoming guidance letter to the OfS from the Secretary of State and OfS recurrent grant tables for providers for 2019-20. The latter will not be issued until May 2019.
16. In developing the terms and conditions of funding, we have considered carefully how they interact with the conditions of registration that apply to providers in the Approved (fee cap) category and sought to minimise any overlap between them. Where requirements are a condition of registration, we have sought to avoid replicating them as conditions of funding. However, it should be noted that regulatory action taken in the event of a breach of a condition of registration could result in changes to grant allocations and payments. This may arise if a provider ceases to be registered as an Approved (fee cap) provider, or if its registration, or elements of its registration, are suspended.
17. The terms and conditions of funding are therefore significantly reduced compared to those that applied up to 31 July 2018. Elements that have been removed include, for example, those relating to:
 - a. Regulated tuition fees and access and participation plans, statements and agreements (covered by conditions of registration A and G1).
 - b. The financial sustainability and governance of a provider (covered by conditions of registration D and E).
 - c. The provision of data and information, including that used to inform funding (covered by conditions of registration F3 and F4).
18. Instead, the terms and conditions of funding focus on:
 - a. The uses to which providers may apply OfS funding.
 - b. The circumstances under which we may recalculate and adjust funding.
 - c. A small number of requirements relating to specific grants, including eligibility criteria for them.
19. Funding will be payable only while, and in respect of periods during which, a provider meets all eligibility requirements for them (including that it is registered in the Approved (fee cap) part of the OfS's Register). Providers that join that part of the Register will not be eligible for grants relating to any period prior to their registration in the Approved (fee cap) category, nor to grants whose distribution between providers has been finalised prior to that registration.
20. We have been more prescriptive in some areas about the uses to which providers may apply OfS funding. In practice, we do not believe these requirements will be challenging for providers

to meet, because in general OfS grants make only a relatively small contribution to the overall costs of the activities they support (students' tuition fees commonly provide the largest part).

Intake targets for medicine and dentistry

21. In previous years, terms and conditions of funding have specified a requirement for providers with medical or dental schools to comply with intake targets for pre-registration courses. These targets exist to support workforce planning in the NHS, recognise the very high cost to government (including the OfS) of training for doctors and dentists, and ensure that there is not a mismatch between the numbers graduating and the number of foundation programme training places available. The terms and conditions of funding have set out two forms of action to be taken in the event of over-recruitment:
 - a. We have not counted recruitment above intake targets in our calculation of high-cost subject funding.
 - b. We have applied a grant reduction, broadly equivalent to the cost to government of providing student support, where providers have exceeded their intake targets in a second successive year.
22. These adjustments have then been repeated over a five-year period, reflecting the typical duration of an undergraduate pre-registration medicine or dentistry course⁷.
23. The draft terms and conditions of funding for 2019-20 are silent on compliance with medical and dental intake targets, but targets still apply and providers must adhere to them. We propose, however, to change our approach to monitoring compliance with those targets and taking action in the event of over-recruitment. In doing so, we note that compliance with intake targets has generally been good in recent years (by providers both individually and collectively) and that we are entering a period in which the government is seeking a significant increase in medical intakes. We wish to adopt mechanisms that will support providers in recruiting as closely as possible to their intake targets and not risk collective under-recruitment.
24. As is the case now, we will not count recruitment towards our funding allocations where it is above intake targets. This helps manage our budgets and ensures support for other areas of provision is not reduced by over-recruitment to these very high-cost programmes. However, we propose two modifications in our approach:
 - a. This should apply not just to high-cost subject funding, but also to other recurrent targeted allocations, such as student premiums.
 - b. We should generally assess over-recruitment by a provider over a rolling five-year period, rather than immediately taking action for over-recruitment in a single year. This will provide a little more flexibility for providers in managing their recruitment from year to year. For providers with new medical schools, following the recent competition, we would modify this slightly, recognising that they do not yet have five years of intakes to report: in these cases,

⁷ For further information about these adjustments see Annex A, paragraphs 29 to 34 of 'Terms and conditions of funding for higher education institutions for the period to 31 July 2019', OfS 2018.15, at www.officeforstudents.org.uk/publications/terms-and-conditions-of-funding-for-higher-education-institutions/.

we may first assess their recruitment against targets after three years and take action accordingly.

25. We propose not to continue applying grant reductions where providers have exceeded their intake targets in two successive years. However, where we observe a pattern of repeated over-recruitment we will warn a provider about its behaviour and if it persists, we may reduce its intake target for the next academic year, enabling a redistribution of funded places to other providers.
26. We have not included these arrangements in the terms and conditions of funding, because they would be features of the methods we would use to determine future allocations of grant and intake targets, rather than adjustments that we would make to the level of grant within the year. Nevertheless we would welcome comments on these proposals, alongside any other comments providers may have on the draft terms and conditions of funding.

Funding methods for 2019-20

27. At the time of writing, we have not received our guidance letter from the Secretary of State, setting out the funding available for the 2019-20 financial year (the latter was not shown in the guidance letter of 20 February 2018⁸) and the government's funding priorities. The OfS board expects to make decisions at its meeting in March to enable grants for 2019-20 to be announced in the spring. We expect to announce:
- a. Formula capital grants to providers for the 2019-20 financial year (1 April 2019 to 31 March 2020) before the end of March 2019.
 - b. Recurrent grants to providers for the 2019-20 academic year (1 August 2019 to 31 July 2020) on Wednesday 8 May 2019. This timing is to avoid a clash with the pre-election period before the local elections on 2 May and the early May bank holiday.
28. OfS 2018.31 set out, and invited comment on, our approach to funding for 2019-20. It explained that this would be transitional, because two major reviews of funding will not be complete in time to inform these allocations. These are the government's review of post-18 education and funding, and a fundamental review of our own funding method. We will consult providers and others fully on the development of our funding methods for future years. In the meantime, we are continuing to apply existing funding methods until our review is complete, but will decide the balance of funding between different elements of grant to reflect the funding available to us and our priorities. We will hold discussions with sector bodies to invite further views on our approach for 2019-20 and welcome written comments on the already published method. We will, as far as possible, treat all eligible higher education providers consistently, including those that we have not been empowered to fund for 2018-19. We have now collected data from providers to inform the calculation of formula-based allocations⁹.
29. Further to the broad approach to formula funding set out in OfS 2018.31, we propose to change the formula funding method for capital grants for 2019-20. For 2018-19, following the approach developed by HEFCE, this was calculated pro rata to recurrent resource, which comprised 2018-19 OfS recurrent grant, plus an assumption of tuition fee income of £6,165 per full-time equivalent student (FTE)¹⁰ (which is the regulated full-time undergraduate basic fee limit for providers). We did not provide allocations in 2018-19 to providers whose share of the funds would be less than £10,000.
30. The approach taken in 2018-19 was possible because 2018-19 recurrent grants had been determined by the time the capital allocations were announced in May 2018. However, 2019-20 recurrent grant allocations will not be available in time to inform 2019-20 capital allocations, if the latter are to be announced in March 2019. Also we believe it would be inappropriate for 2019-20 capital allocations to be informed by 2018-19 recurrent grants because we expect to be funding some providers for the first time for 2019-20.

⁸ See www.officeforstudents.org.uk/media/1111/strategicguidancetotheofs.pdf

⁹ Data collected in HESES18 and HEIFES18 is available at www.officeforstudents.org.uk/data-and-analysis/data-collection/get-the-data/

¹⁰ The FTEs counted for this purpose were both those fundable by the OfS and those on initial teacher training courses leading to qualified teacher status fundable by the Department for Education.

31. Therefore, to avoid the direct link with recurrent grants, we propose instead to calculate formula capital grants for 2019-20 pro rata to weighted FTEs. The FTEs to be used for this purpose will be the same ones that will inform 2019-20 recurrent grants¹¹, plus those on initial teacher training courses leading to qualified teacher status fundable by the Department for Education. To reflect factors that may give rise to higher capital costs for providers, we propose to weight these FTEs by:
- a. Price group and level. These would recognise that, for example, clinical and laboratory-based subjects have higher capital costs than classroom-based subjects; and that postgraduates may use more specialist facilities and do so more intensively.
 - b. London weighting. This would recognise the additional costs of operating in London, reflecting in part the findings of a consultancy study commissioned by HEFCE in 2017¹².
 - c. A specialist institution weighting. This would recognise the particular needs of world-leading specialist providers, following review by HEFCE in 2015-16¹³.
32. It is possible to determine values for these weighting factors in a way that (if using the same underlying student data and budget) would produce a broadly similar distribution of capital funding between providers as we made for 2018-19. This is possible because they reflect most of the elements of funding that comprise our recurrent grants. Our modelling suggests that the following weights would broadly achieve this:
- a. Price group weights of 2.7 for A; 1.9 for B, 1.1 for C1 and 1 for C2 and D, but with an additional 10 per cent of the price group weighting provided for postgraduates in price groups A to C2. These weighting factors reflect that a significant part of the 2018-19 formula capital grant was driven by the uniform assumed fee per FTE, but also reflects the OfS's high-cost subject funding and other price group-related targeted allocations¹⁴.
 - b. London weights of 8 per cent (0.08) for providers wholly in inner London, 5 per cent (0.05) for those wholly in outer London and zero for those wholly outside London. Providers with provision in more than one of these areas would have an average weighting to reflect the proportion of their activity in each area. These weights do not fully recognise the additional costs of operating in London, because there are also benefits to providers of being there, an area where participation rates are already substantially higher than other parts of the country.

¹¹ That is, the fundable student FTEs reported by providers in the HESES18, HEIFES18 or HESF19 surveys. Further information about these surveys is available at www.officeforstudents.org.uk/data-and-analysis/data-collection/.

¹² 'Regional variation in costs and benefits for higher education providers in England', a report by Deloitte LLP to HEFCE, available at: <https://webarchive.nationalarchives.gov.uk/20180405115447/http://www.hefce.ac.uk/pubs/rereports/year/2017/regional/>.

¹³ See <https://webarchive.nationalarchives.gov.uk/20170712123151/http://www.hefce.ac.uk/lt/howfund/institution/>.

¹⁴ These include the allocations for very high-cost STEM subjects, intensive postgraduate taught provision, the nursing, midwifery and allied health supplement and the postgraduate taught supplement.

- c. Variable specialist institution weights per FTE weighted by price group and level to reflect the size of a provider's specialist institution targeted allocation relative to its overall assumed resource. This would be calculated as $1 \div (1 - x)$, where x is the provider's specialist institution targeted allocation as a proportion of its total teaching resource used in the 2018-19 formula capital funding method.

33. The overall weighted FTEs for a provider would therefore be calculated as:

FTEs weighted by price group and level x (London weighting + specialist institution weighting)

34. While these weights reflect most of the factors that determined the distribution of 2018-19 formula capital grants, they do not reflect all of them – in particular the student premium allocations and some smaller targeted allocations. We do not propose to include weighting factors for these, because they would make little difference to the distribution of funding between providers or because we do not generally expect capital costs to vary significantly according to the activities that the targeted allocations support (such as to widen access and support student success, or providers' participation in student exchange programmes like Erasmus+¹⁵).
35. All providers have a responsibility to ensure their facilities and courses are accessible to those with disabilities and to make reasonable adaptations to achieve this, irrespective of how many students with disabilities they may have in a particular year. We accept that there are likely to be additional capital costs relating to support for students with disabilities. Providers can of course use their capital grants from the OfS towards equipment and adaptations that will improve accessibility to their facilities and courses. On this basis, we do not consider it necessary to include a weighting factor in the capital funding method to explicitly recognise the proportion of students they have in any one year who have a disability. The disabled students' premium in the recurrent funding method does this, and disabled students' allowances are provided to address students' particular needs, including for equipment.
36. The weighting factors described in paragraph 32 are illustrative. In determining the weights to apply for 2019-20 the OfS board will also have regard to the priorities set out in the government's strategic guidance letter – for example in considering whether the weightings for high-cost subjects or price groups should be higher – as well as its other duties under HERA.
37. We want to distribute capital grant in the most effective way to secure benefits for students. In recent years, formula capital grants have not been provided where a provider's share would be less than £10,000, so as to avoid distributing relatively small sums that are likely to have limited impact. We may wish to consider increasing the threshold to a higher amount.
38. We would welcome views on the approach to formula capital funding set out above and, in particular, want to better understand the impact of changing FTE weighting factors, and the impact on providers that receive smaller allocations if the minimum threshold was raised.

¹⁵ Erasmus+ is the European Union programme for education, training, youth and sport. For more information, see: www.erasmusplus.org.uk/.

Annex A: Terms and Conditions of OfS funding for 2019-20: draft for consultation

[This draft sets out proposed wording as far as we can specify it at the time of writing, but includes references to documents that have not yet been issued, including the forthcoming guidance letter to the OfS from the Secretary of State and OfS recurrent grant tables for providers for 2019-20. The latter will not be issued until May 2019.]

Introduction and scope

1. The terms and conditions of funding set out in this document apply for the academic year 1 August 2019 to 31 July 2020. They are made under Section 41 of the Higher Education and Research Act 2017 (HERA). They apply to the higher education providers that the OfS funds; they support the OfS's responsibility to provide annual assurances to Parliament that funds provided are being used for the purposes for which they were given and value for money is being achieved.
2. The OfS funds eligible higher education providers – those registered in the Approved (fee cap) category of the OfS Register¹ – for certain activities as defined under Section 39(1) of HERA. Being registered as an Approved (fee cap) provider is a prerequisite for a provider to be eligible for OfS funding under Section 39(1) of HERA, and the main requirements that OfS places on providers arise from the conditions of registration that apply to them as Approved (fee cap) providers. These are set out in the OfS regulatory framework for higher education in England² and in any specific conditions of registration that additionally apply to a provider, as separately notified to it (whether or not such specific conditions are published on the OfS's Register³).
3. Terms and conditions of OfS funding are supplementary to any conditions of registration that apply. However, condition of registration G2 requires a provider to comply with any terms and conditions that, under sections 41(1) or 94(2) of HERA, are attached to financial support received from the OfS and UK Research and Innovation (UKRI). A breach of these terms and conditions of OfS funding may therefore be a breach of this condition of registration.
4. All funding allocated to eligible higher education providers by the OfS under Section 39(1) of HERA is subject to the terms and conditions set out in this document and, in accepting funding, the provider is agreeing to them. The OfS will make material revisions to this document only after consulting providers or such representative bodies for providers as it considers appropriate. The OfS may apply additional terms and conditions to individual grants, relating to the use of funds or monitoring arrangements: these will be set out before the first payment of those grants is made, normally when the grant award is first notified to the provider.

¹ Under the Higher Education (Transparency Condition and Financial Support) (England) Regulations 2018 (www.legislation.gov.uk/uksi/2018/1382/made)

² See www.officeforstudents.org.uk/publications/securing-student-success-regulatory-framework-for-higher-education-in-england/.

³ See www.officeforstudents.org.uk/advice-and-guidance/the-register/the-ofs-register/.

Terminology

5. **‘Provider’** means an ‘English higher education provider’ as defined in Section 83 of HERA. ‘Eligible higher education provider’ means a provider registered in the Approved (fee cap) part of the OfS’s Register⁴.
6. **‘Funding’, ‘Grant(s)’ and ‘Money’** are used synonymously in this document to mean financial support provided under section 39(1) of HERA by the OfS to the governing body of an eligible higher education provider in respect of expenditure incurred, or to be incurred, by the provider or by a qualifying connected institution, for the purposes of either or both of the following:
 - a. The provision of education by the provider.
 - b. The provision of facilities, and the carrying on of other activities, by the provider, which its governing body considers it is necessary or desirable to provide or carry on for the purposes of, or in connection with, education.
7. **‘Qualifying connected institution’**, in relation to an eligible higher education provider, is defined in Section 39(4) of HERA and means a college, school, hall or other institution:
 - a. To which the provider’s governing body proposes to pay, with the consent of the OfS⁵, all or some of the payments made to it under subsection (1) of Section 39, and
 - b. Which the OfS is satisfied has a sufficient connection with the provider for the purposes of that subsection.
8. **‘Recurrent grant’ and ‘recurrent funding’** mean funding allocated on an annual basis in respect of operating expenditure incurred, or to be incurred, by the provider on its ongoing teaching and related activities for an academic year. It is largely calculated by formula, informed by data submitted by providers, and is set out in recurrent grant tables that the OfS will normally first issue in the spring preceding the start of the academic year.
9. **‘Capital funding’ and ‘capital grant’** mean funding allocated in respect of capital expenditure incurred, or to be incurred, by the provider. Capital expenditure means money used to acquire or maintain fixed assets, such as land, buildings and equipment, and which is normally capitalised in the provider’s audited annual accounts. Capital grants must be used for the purposes set out in paragraphs 40 to 44.
10. **‘Academic year’** means the 12-month period 1 August to the following 31 July.
11. **‘Financial year’** means the 12-month period 1 April to the following 31 March.
12. **‘Suspend’ or ‘suspension of’** grant are used to mean that the amount of grant that was due to be paid in a particular time period will not be paid until the provider has met specific conditions,

⁴ As defined in The Higher Education (Transparency Condition and Financial Support) (England) Regulations 2018 (www.legislation.gov.uk/uksi/2018/1382/made). Eligibility criteria for registration of a provider is set out in paragraphs 74 to 91 of the regulatory framework for higher education in England.

⁵ The provider must obtain the OfS’s explicit consent before passing OfS funding to a qualifying connected institution.

but will be payable (subject to any recalculation and adjustment that may apply) once the OfS confirms to the provider that it has met those conditions. Such conditions may relate to the provider's registration with the OfS (which could itself be suspended in whole or part), or to specific requirements it places on a provider for its funding purposes.

13. **'Withdraw'** or **'withdrawal of'** grant are used to mean that the amount of grant that was due to be paid in a particular time period will not be paid at all. This may apply to all OfS funding for a provider or to a particular element of its OfS grant. It may arise as a result of changes to the status of its registration with the OfS (such as its removal or suspension in whole or part from the OfS's register), or for another reason arising from the terms and conditions of funding set out in this document or elsewhere.
14. **'Adjust'** and **'adjustments to'** grant and other allocations (such as of student numbers) mean that the OfS will recalculate and implement changes to payments or other allocations that it has previously notified to a provider. Adjustments may be positive or negative (including being reduced to zero), and may arise as a result of changes to the data or information used to inform funding calculations (including in relation to any eligibility criteria for funding that may apply⁶), the OfS's monitoring of funding allocations or for other reasons arising from the terms and conditions under which it provides grant. Where an adjustment involves a reduction to grant, this will normally be implemented by reducing future grant payments. If these are insufficient to allow the OfS to recover grant already paid in a timely way, the OfS may require a direct repayment by the provider.

The terms under which the OfS provides funding

15. The OfS will notify allocations of funding to each eligible higher education provider. The OfS expects to issue grant tables in May 2019, showing the allocations of recurrent funding for the provider for the 2019-20 academic year. Formula-based allocations of capital funding for the 2019-20 financial year will also be announced in spring 2019. Other grants will be notified separately.
16. The OfS may adjust allocations subsequently:
 - a. In the light of any data assurance work it carries out with individual providers, any other data amendments that it agrees to accept⁷, and any transfers of students or activity between providers that it agrees to reflect.
 - b. For other reasons arising from the eligibility criteria for, and terms and conditions of, OfS funding set out in this document or notified separately. The OfS may also deny a provider access to future grant funding, including access to specific grants or to discretionary funding.

⁶ Some OfS grants may have additional criteria or conditions that must be met as a prerequisite for a provider to be eligible for them (that is, additional to the general requirement that the provider is registered in the Approved (fee cap) part of the OfS's register). If the OfS finds, after a grant award has been made, that a provider did not meet such eligibility criteria, it may adjust or withdraw the grant.

⁷ The OfS's data amendments process is set out at: www.officeforstudents.org.uk/data-and-analysis/amendments-to-data/.

17. The OfS has determined initial allocations of recurrent and formula capital grants for 2019-20 for some providers using data they have submitted to the Higher Education Students Forecast 2019-20 (HESF19) survey⁸. This applies to providers that do not have higher education provision recognised for OfS funding purposes in 2018-19. Where this is the case, the OfS will recalculate and adjust those allocations to reflect a provider's actual student numbers in 2019-20⁹, using the same funding methods¹⁰, data categorisations and definitions as have applied in determining the initial allocations. Where this recalculation results in a reduction to grant, the OfS will invite the provider to submit an appeal for mitigation, before it confirms the final adjustment that it will implement. However, (as set out in paragraph 32) if the provider does not have any OfS-fundable students in 2019-20, all recurrent and capital funding for that year will be withdrawn, and no appeal for mitigation will be invited.
18. The OfS reserves the right to revise any allocation to take account of changes to the grant available to it from government (see paragraphs 22 and 23).
19. In cases where it requires repayment, the OfS may charge interest, at 2 per cent above the Bank of England base rate, for the period before the provider repays the funding.

Data assurance

20. If the OfS finds (whether through data reconciliations, data audit or any other means) that erroneous data has resulted in providers receiving incorrect funding or student number allocations, then it will adjust these accordingly – subject to the availability of its funds. Where data error has resulted in a funding allocation being too high, it will recover the excess funding from the provider for any year informed by the audited or reconciled data (including any consequential effects on funding for subsequent years) unless there is evidence that a provider has deliberately not complied with the funding rules or has ignored previous Higher Education Funding Council for England (HEFCE) or OfS advice and recommendations. In these exceptional circumstances the OfS may recover funding that relates to a longer period, up to a maximum of seven years (including in relation to years when funding was provided by HEFCE). A provider must repay any funding that the OfS identifies as having been overpaid as a result of such recalculations.
21. If data or information has not been provided, or the OfS considers that it is incomplete, incorrect or otherwise not of a satisfactory quality, then the OfS may, at its sole discretion, use its own assumptions or estimates about the relevant data or information for the provider to determine its eligibility for, and level of, funding. This may include assuming that the provider has no eligible activity to count towards the allocation of a particular element of funding and thus that no such funding should be provided to it.

⁸ See www.officeforstudents.org.uk/publications/hesf19-higher-education-students-forecast-2019-20/

⁹ As previously notified in paragraph 26b of 'Funding for academic year 2019-20: Approach and data collection', OfS 2018.31 (www.officeforstudents.org.uk/publications/funding-for-academic-year-2019-20-approach-and-data-collection/), and in the HESF19 survey.

¹⁰ This may involve changes to rates of grant as a result of implementation of changes to OfS budgets as described in paragraphs 18, 22 and 23; or changes to provider grant rates or weighting factors (such as to recognise the additional costs of operating in London), as a result of recalculation using updated provider data.

Changes to the grant available to the OfS

[This section reflects the circumstances that applied for 2018-19, but precise wording will be revised depending on the content of the 2019 strategic guidance letter and the OfS board decisions that will follow. The underlying principle that allows the OfS to revise allocations will remain.]

22. The government's strategic guidance letter to the OfS of [DD MMMMMM 2019]¹¹ confirmed the teaching funding available for the 2019-20 financial year (April to March). However it did not show any indicative funding for the 2020-21 financial year. The letter also identified the policies and priorities that should underpin the OfS's approach to funding.
23. The OfS's board has agreed 2019-20 academic year budgets in the light of the strategic guidance letter. In doing so, it has had to make an assumption about the funding that might be available for the 2020-21 financial year, because of its four month overlap with the 2019-20 academic year. Any changes to the grant made available to it by government for financial year 2019-20, or that it has assumed for financial year 2020-21, are likely to affect the funding it is able to distribute to providers in the 2019-20 academic year. If such changes arise, the OfS may adjust any funding allocation to a provider after it has been announced, to ensure that the total funding the OfS allocates remains within the available budget.

Arrangements for payment

24. The OfS will normally pay recurrent funds to the provider in monthly instalments, in accordance with a funding profile for the whole academic year that will be notified separately. The OfS will normally pay formula-based capital grants for the 2019-20 financial year in monthly instalments during the eight month overlap with the 2019-20 academic year (that is, between August 2019 and March 2020), according to a funding profile that will also be notified separately.
25. The OfS reserves the right to amend payment profiles during the year, but it will make adverse changes to the profile only in exceptional circumstances and following consultation with the provider.
26. The OfS has a limited budget to distribute between eligible higher education providers. The distribution of grants between providers is determined and announced according to a timetable that the OfS will determine. While providers may apply to join the OfS's Register at any time, upon registration in the Approved (fee cap) category, a provider becomes eligible (subject also to any other specific eligibility criteria that may apply) only for those grants whose distribution has not already been determined by the OfS, even if payment of those grants has not yet been made (in whole or part). This means that:
 - a. **Where the OfS determines allocations through a competitive or review process** that involves an assessment against eligibility criteria or the prioritisation of submissions or bids from providers¹², a provider not registered in the Approved (fee cap) part of the OfS's Register at the time that the OfS agrees those allocations is not eligible. Such providers

¹¹ Weblink to be confirmed.

¹² Examples include Challenge Competitions (www.officeforstudents.org.uk/advice-and-guidance/funding-for-providers/ofs-challenge-competitions/), the National Collaborative Outreach Programme (www.officeforstudents.org.uk/advice-and-guidance/promoting-equal-opportunities/national-collaborative-outreach-programme-ncop/) and the targeted allocation for specialist institutions (<https://webarchive.nationalarchives.gov.uk/20170712123151/http://www.hefce.ac.uk/It/howfund/institution/>).

only become eligible in the next competition or review process held after their addition to the Register in the Approved (fee cap) category. This principle also applies where allocations determined by such a process apply for a period of more than one year.

- b. **Where the OfS otherwise determines allocations by formula**, the OfS may, at its sole discretion, consider whether it has scope to include a provider, newly registered in the Approved (fee cap) category, in any update or recalculation of such allocations where the provider was not so registered when the allocations were first determined. This applies to most elements of recurrent and formula-based capital grants. Factors that the OfS will take into account in deciding whether it has such scope include (but may not be limited to):
 - i. Whether the OfS has sufficient budget available in the year to make an allocation to the provider without this having an adverse effect on allocations for providers already announced.
 - ii. Whether the OfS has sufficient data or information necessary to determine an allocation for the provider, or can secure it in a timely way.
 - iii. The desirability of treating providers in similar circumstances consistently.

27. Grant payments (whether profiled or otherwise) will be made only while, and in respect of periods during which, a provider meets all eligibility requirements for them, including that it is in the Approved (fee cap) category on the OfS's Register. A provider will have no entitlement to receive any unpaid balance of a grant previously notified if, at the time payment is due, it is no longer eligible for funding. Thus:

- a. If the OfS suspends a provider from its Register, or suspends some elements of its registration, it may (depending on the nature of that suspension) suspend or withdraw payments of grant, in whole or part, until the suspension from the Register is lifted.
- b. If a provider ceases to be registered in the Approved (fee cap) category of the OfS Register, then the provider's eligibility for OfS funding and all grant payments to it will cease with immediate effect.

Repayable grants and loans

28. The OfS may make repayable grants or loans to a provider for the purposes set out in paragraph 6. The provider must repay any such financial support to the OfS according to the timetable and circumstances that the OfS will specify when it makes such awards.

Conditions of funding with which providers must comply

29. The OfS will withdraw grant to the provider if it is not used for the purposes intended¹³, as set out in paragraphs 30 to 46, or as notified separately.
30. The provider is free to distribute internally at its own discretion all funding from the OfS which is not earmarked or provided for a specific purpose, subject to that funding being used for the activities and facilities eligible for funding under Section 39(1) of HERA (see paragraphs 6 and 7); and for the primary benefit of the provision of higher education courses and current and prospective students on them. The OfS recognises that its funds may also benefit other areas of activity, for example in contributing to the costs of staff who may work across both further and higher education, or across higher education teaching, research and administrative roles. Any funds that have been earmarked or provided for a specific purpose must be used solely for that purpose.
31. When using OfS funding providers must apply proper processes that ensure effective accountability and secure value for money. This requirement also applies where the provider passes on part of its OfS funding to another legally distinct entity (whether to a qualifying connected institution, or under a subcontractual arrangement) for the provision of education, or related facilities or activities. In these circumstances the provider awarded the funding by OfS will be held accountable for those funds. That provider must therefore ensure adequate and effective accountability arrangements are in place when it passes on such funding to another entity.
32. If a provider does not have any OfS-fundable students in 2019-20, all recurrent and capital funding for that year will be withdrawn. Unless subsequently revised, OfS-fundable students has the meaning set out in Annex F of the 2018 Higher Education Students Early Statistics (HESES) and Higher Education in Further Education: Students (HEIFES) surveys¹⁴, in each case as applying to countable students in the survey populations who are on courses recognised for OfS funding purposes.

Earmarked funding

33. Some OfS funding is earmarked as being provided for specific purposes and must be used only for those purposes. This applies to some recurrent grants (see paragraphs 34 to 39) capital funding (see paragraphs 40 to 45), funds awarded through competitions, such as the

¹³ Under condition of registration E3 the governing body of a provider must ensure the provider's compliance with all of its conditions of registration and with the OfS's accounts direction. The most recent accounts direction, relating to the academic year 2018-19, was published in 'Regulatory advice 9: Accounts direction. Guidance on preparing and publishing financial statements' (OfS 2018.26). Under the accounts direction, a provider's external auditor must report to the governing body on whether in all material respects:

- funds, from whatever source, administered by the provider for specific purposes have been properly applied to those purposes and managed in accordance with relevant legislation.
- where applicable, funds provided by HEFCE, the OfS and Research England have been applied in accordance with the relevant terms and conditions and any other terms and conditions attached to them.

¹⁴ HESES is available at: www.officeforstudents.org.uk/publications/heses18-higher-education-students-early-statistics-survey-2018-19/; HEIFES is available at: www.officeforstudents.org.uk/publications/heifes18-higher-education-in-further-education-students-survey-2018-19/.

National Collaborative Outreach Programme (NCOP)¹⁵ and OfS Challenge Competitions¹⁶, and to other grants that support national facilities and regulatory activities. The OfS will specify any restriction on the use of funds in advance of the first payment of those funds (usually when the award of funding is notified to a provider). Any such restriction may be **additional to** the terms and conditions specified in this document.

Student premium funding

34. Three formula-based student premium allocations are shown on the 2019-20 recurrent grant Tables A and C:

- premium to support successful student outcomes: full-time
- premium to support successful student outcomes: part-time
- disabled students' premium.

35. Student premium funding is earmarked to contribute towards the aims and objectives set out in providers' approved access and participation plans for 2019-20 or (for those without such plans) access and participation statements. In particular, the full-time and part-time student premiums are intended to support the costs of activities that contribute to providers' ambitions around student success and progression. Funding allocated through the disabled students' premium is earmarked to support the costs of activities that will promote inclusion and remove barriers to participation and success for disabled students¹⁷. Providers must therefore use student premium grants solely for these purposes.

Targeted allocation for very high-cost STEM subjects

36. To be eligible for the targeted allocation for very high-cost STEM¹⁸ subjects, shown on the 2019-20 recurrent grant Table F, a provider must be actively recruiting new entrants, in the year for which funding is provided, to the very high-cost disciplines (physics; chemistry; chemical engineering; and minerals, metallurgy and materials engineering) that this funding aims to sustain. The funding is earmarked to support the direct teaching costs of higher education programmes in those subjects and providers must therefore use the funding solely for this purpose. If the OfS finds that a provider was not eligible for funding, including because it has ceased recruiting to the subjects concerned, or that the provider has not used the funding for the purposes intended, the OfS will require the provider to repay all of the allocation attributable to the subject(s) concerned.

¹⁵ See www.officeforstudents.org.uk/advice-and-guidance/promoting-equal-opportunities/national-collaborative-outreach-programme-ncop/.

¹⁶ See www.officeforstudents.org.uk/advice-and-guidance/funding-for-providers/ofs-challenge-competitions/.

¹⁷ This includes measures to address the needs of students with, for example, mental health issues or autistic spectrum disorders. Providers should have regard to the report 'Inclusive teaching and learning in higher education as a route to excellence' (www.gov.uk/government/publications/inclusive-teaching-and-learning-in-higher-education), which encourages providers to look at how they can support and offer the best environment for disabled students, considers the requirement to provide 'reasonable adjustments' under the Equality Act 2010, and suggests actions to mitigate risks associated with that.

¹⁸ Science, technology, engineering and mathematics.

Nursing, midwifery and allied health supplement

37. To be eligible for the nursing, midwifery and allied health supplement, shown on the 2019-20 recurrent grant Table E, a provider must be actively recruiting new entrants, in the year for which funding is provided, to pre-registration courses for the professions listed in paragraph 38 that this funding aims to sustain. The funding is earmarked to support the direct teaching costs of such courses and providers must therefore use the funding solely for this purpose. Pre-registration courses are courses that on successful completion lead to eligibility to apply to join the registers (or the relevant part or parts of the registers) for the professions concerned maintained by:

- a. The Nursing and Midwifery Council (for nursing and midwifery)¹⁹.
- b. The Health and Care Professions Council (for other professions)²⁰.

38. For the purposes of the nursing, midwifery and allied health supplement, the professions are:

- a. For both undergraduate and postgraduate courses:
 - adult, mental health, child, learning disability and other (unclassified) nursing
 - therapeutic radiography
 - diagnostic radiography
 - podiatry and chiropody
 - orthoptics
 - prosthetics and orthotics
 - speech and language therapy.
- b. For postgraduate courses only:
 - midwifery
 - dietetics
 - occupational therapy
 - physiotherapy.

39. If the OfS finds that a provider was not eligible for funding, including because it has ceased recruiting to pre-registration courses for the professions concerned, or that a provider has not

¹⁹ Pre-registration courses are those at English providers listed at www.nmc.org.uk/education/approved-programmes/ by selecting the relevant course type from the drop-down menu headed 'Course'. These course types are, for midwifery: 'Pre-registration midwifery – Three-year programme – 18 Month Programme'; and for the nursing professions:

- 'Pre-registration nursing – Adult'
- 'Pre-registration nursing – Child'
- 'Pre-registration nursing – Learning Disabilities'
- 'Pre-registration nursing – Mental Health'
- 'Dual Award – pre-registration nursing' (for each of the six possible combinations of two of the four specialisms listed above).

²⁰ Pre-registration courses are those at English providers listed at www.hcpc-uk.org/education/programmes/register/ by selecting the relevant profession from the drop-down menu under 'Search by profession'.

used the funding for the purposes intended, the OfS will require the provider to repay all of the allocation attributable to the course(s) concerned.

Capital funding

40. Capital funding (as defined in paragraph 9) is provided on a financial year basis and must be used for the purposes intended, set out below. The OfS is not permitted to make payments to providers in advance of need and thus providers must use capital grants in full by the end of the financial year (by March) for which they are provided. OfS funding must not be used for advance payments to contractors, or other financing arrangements (such as bonds) where payments precede production of goods or delivery of services.
41. Allocations of capital funding are provided to enhance the learning experience of higher education students at providers, by helping raise the quality of their learning and teaching facilities. Providers must use capital grants for this purpose, in particular to contribute towards:
 - a. Investment in equipment used in learning, teaching and e-learning, including information technology (IT)-related equipment.
 - b. Replacement of premises or infrastructure for learning and teaching.
 - c. Refurbishment of existing teaching spaces, including through IT-related enhancements, such as improvements to internal IT networks or supporting infrastructure.
42. OfS capital funding must be used for projects that focus on higher education teaching, and may be subject to audit. The OfS recognises, however, that it may be neither feasible nor desirable to create ring-fenced boundaries between higher and further education, or teaching and research facilities. For example, equipment purchased using OfS capital funds may be used by both higher and further education students or for both teaching and research purposes.
43. The use of capital grants must not be attributed to capital expenditure where that expenditure is being met by any other UK or EU public funds. And the use of OfS formula-based capital grants must not be attributed to capital expenditure where that expenditure is being met by other OfS capital grants for specific projects.
44. Providers should use capital funding in ways that will improve environmental sustainability, for example, in reducing carbon emissions.
45. All providers that are in receipt of OfS capital funding for financial year 2019-20 must report on their use of that funding. Details about reporting requirements will be notified separately. If the OfS is not satisfied that a provider has used the funds in accordance with the requirements in paragraphs 40 to 44, or as notified separately, it will reclaim some or all of the funding provided.

State aid

46. Providers must ensure compliance with state aid²¹ law in their own uses of OfS funding. In the event of any breach of state aid law, providers must repay all or some funding, together with interest, if required by the OfS to do so. The OfS may also be required to withhold funding or aspects of funding to any provider which is subject to a state aid enquiry or which has an outstanding recovery notice against it.

Exchequer interest

47. There is an Exchequer interest that has built up over time in providers in receipt of HEFCE and OfS capital funding. All providers that receive OfS capital funding from the 2019-20 financial year, and any providers that, as higher education institutions²², have received HEFCE or OfS capital funding during the period 1 August 2006 to 31 March 2019, must comply with the following conditions in relation to such capital funding received during those periods.

48. If either of the following events occurs, they will trigger immediate liability for the provider to repay to the OfS the full amount of the Exchequer interest balance. The provider will recognise the OfS as an unsecured creditor until such repayment is made. If a liability to make repayment arises, the OfS may agree to accept repayment of some other sum, or to delay repayment, at its absolute discretion, and such agreement may be on such terms and conditions as the OfS thinks fit.

- a. The first trigger event will be if the provider becomes insolvent, including going into liquidation or administration, or if it dissolves or transfers its undertaking to some other body, or if it experiences any analogous event.
- b. The second trigger event is if the provider ceases to be an eligible higher education provider for OfS funding purposes (that is, is no longer in the Approved (fee cap) category of the OfS Register).

49. If either of the triggers is activated, the OfS will calculate, and share with the provider, the Exchequer interest balance. It has the right, but not the obligation, to request repayment of the Exchequer interest balance: the OfS has discretion to waive the requirement for repayment. In making this decision, the OfS will consider the extent of any continuing public benefit arising from the use of previous OfS or HEFCE capital grants.

Terms and conditions of OfS or HEFCE funding applying for earlier years

50. The OfS and UKRI have each assumed responsibilities from the previous regulatory system. In relation to financial and academic years up to 2017-18 inclusive, terms and conditions of grant previously specified by HEFCE and agreements made by the Director of Fair Access to Higher Education continue to apply. The OfS and Research England will, individually or together as

²¹ Government guidance on state aid is available at www.gov.uk/guidance/state-aid. Information on the Competition and Markets Authority's role in operating the UK state aid regime is available from: www.gov.uk/government/collections/cmas-role-after-brexite.

²² As defined in Section 65 of the Further and Higher Education Act 1992 (www.legislation.gov.uk/ukpga/1992/13/section/65/2010-05-05?timeline=true)

they consider appropriate, continue to monitor compliance with HEFCE terms and conditions of grant and take action against providers that are found to be in breach of them. In addition, terms and conditions of OfS funding for the period 1 April 2018 to 31 July 2019²³ continue to apply: the OfS will continue to monitor compliance with them and take action against providers that are found to be in breach.

51. Action that the OfS may take against providers that are found to be in breach of previous HEFCE or OfS terms and conditions of grant for financial and academic years up to 2018-19 include (but are not limited to):
- a. Recalculating and adjusting grants previously announced where these are found to have been informed by incorrect data from providers. Where HEFCE grants are concerned, the OfS and Research England will agree which of them will take action for any breaches, but following the general principles that:
 - i. OfS will take action in relation to recurrent and capital grants that relate primarily to teaching activities and taught students.
 - ii. Research England will take action in relation to recurrent and capital grants that relate primarily to research and knowledge exchange activities and research students.
 - b. Taking action (including imposing financial requirements on a provider) if non-compliance is found with regulated fee limits in relation to students recruited in any year up to 2018-19 or with any access agreement(s) with the Director of Fair Access to Higher Education or the OfS.

²³ These are set out, as applicable, in OfS 2018.15 (www.officeforstudents.org.uk/publications/terms-and-conditions-of-funding-for-higher-education-institutions/) and OfS 2018.16 (www.officeforstudents.org.uk/publications/terms-and-conditions-of-funding-for-further-education-and-sixth-form-colleges/).

Definitions and abbreviations

Governing body	The university council, board of governors or other body ultimately responsible for the management and administration of the provider's revenue and property, and the conduct of its affairs.
HEFCE	Higher Education Funding Council for England
HEIFES	Higher Education in Further Education: Students (survey)
HERA	Higher Education and Research Act 2017
HESES	Higher Education Students Early Statistics (survey)
HESF	Higher Education Students Forecast (survey)
IT	Information technology
NCOP	National Collaborative Outreach Programme
OfS	Office for Students
Research England	The Research England committee of UKRI. References to Research England in these terms and conditions relate to UKRI functions that are exercised by its Research England committee under Section 97 of the Higher Education and Research Act 2017, but include UKRI, which retains responsibility for those functions.
UKRI	UK Research and Innovation

Must denotes mandatory requirements, and **should** (used as it applies to providers) denotes the OfS's view of good practice.



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